

also become concerned about sudden and unexplained declines in the prices of securities. Such price declines can give rise to questions about the underlying financial condition of an issuer, which in turn can create a crisis of confidence without a fundamental underlying basis. This crisis of confidence can impair the liquidity and ultimate viability of an issuer, with potentially broad market consequences.

As a result of these recent developments, the Commission concluded that there continues to exist the potential of sudden and excessive fluctuations of securities prices generally and disruption in the functioning of the securities markets that could threaten fair and orderly markets. Based on this conclusion, the Commission is exercising its powers under Section 12(k)(2) of the Securities Exchange Act of 1934.<sup>1</sup> Pursuant to Section 12(k)(2), in appropriate circumstances the Commission may issue summarily an order to alter, supplement, suspend, or impose requirements or restrictions with respect to matters or actions subject to regulation by the Commission.

We have determined that issuer repurchases can represent an important source of liquidity during times of market volatility. Exchange Act Rule 10b-18 provides issuers with a safe harbor to effect repurchases within certain conditions. Historically, issuers generally have been reluctant to undertake repurchases without the certainty that their repurchases come within the safe harbor. Temporarily altering the timing and volume conditions in the safe harbor will provide additional flexibility and certainty to issuers that consider executing repurchases during the current market conditions. In these unusual and extraordinary circumstances, we believe altering the timing and volume conditions in Exchange Act Rule 10b-18 is necessary in the public interest and for the protection of investors to maintain fair and orderly securities markets, and to prevent substantial disruption in the securities markets.

*It is ordered*, pursuant to our Section 12(k)(2) powers, that:

In connection with a Rule 10b-18 purchase or with a Rule 10b-18 bid that is made during the period covered by this Order by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any

national securities exchange, an issuer, or an affiliated purchaser of the issuer, shall not be deemed to have violated Section 9(a)(2) of the Exchange Act or Rule 10b-5 under the Exchange Act, solely by reason of the time or price at which its Rule 10b-18 bids or Rule 10b-18 purchases are made or the amount of such bids or purchases or the number of brokers or dealers used in connection with such bids or purchases if the issuer or affiliated purchaser of the issuer meets all of the conditions in Rule 10b-18 with the exception that:

(i) The time of purchases condition in paragraphs (b)(2)(i), (b)(2)(ii), and (b)(2)(iii) of Exchange Act Rule 10b-18 is suspended; and

(ii) The volume of purchases condition in paragraph (b)(4) of Exchange Act Rule 10b-18 is modified so that the amount of Rule 10b-18 purchases must not exceed 100 percent of the ADTV for the security.

All other provisions of Exchange Act Rule 10b-18, including the manner and price of purchase conditions of paragraphs (b)(1) and (b)(3), are not altered by this order. Terms used in this order have the same meanings as those terms used in Exchange Act Rule 10b-18 unless stated otherwise.

This Order shall be effective at 12:01 a.m. EDT on September 19, 2008, and shall terminate at 11:59 p.m. on October 2, 2008 unless further extended by the Commission.

By the Commission.

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. E8-22370 Filed 9-23-08; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 58591]

### Securities Exchange Act of 1934; Emergency Order Pursuant to Section 12(k)(2) of the Securities Exchange Act of 1934 Taking Temporary Action To Respond to Market Developments

September 18, 2008.

The Commission is aware of the continued potential of sudden and excessive fluctuations of securities prices and disruption in the functioning of the securities markets that could threaten fair and orderly markets. As evidenced by our recent publication of emergency orders under Section 12(k) of the Securities Exchange Act of 1934 ("Exchange Act"),<sup>1</sup> we are concerned

about the possible unnecessary or artificial price movements based on unfounded rumors regarding the stability of financial institutions and other issuers exacerbated by short selling. We also believe that some persons may take advantage of issuers that have become temporarily weakened by current market conditions to engage in inappropriate short selling in the securities of such issuers.

Given the importance of confidence in our financial markets as a whole, we have become concerned about sudden and unexplained declines in the prices of securities. Such price declines can give rise to questions about the underlying financial condition of an issuer, which in turn can create a crisis of confidence without a fundamental underlying basis. This crisis of confidence can impair the liquidity and ultimate viability of an issuer, with potentially broad market consequences.

As a result of these recent developments, the Commission concluded that there continues to exist the potential of sudden and excessive fluctuations of securities prices generally and disruption in the functioning of the securities markets that could threaten fair and orderly markets. Based on this conclusion, the Commission is exercising its powers under Section 12(k)(2) of the Exchange Act.<sup>2</sup> Pursuant to Section 12(k)(2), in appropriate circumstances the Commission may by order summarily take action to alter, supplement, suspend, or impose requirements or restrictions with respect to matters or actions subject to regulation by the Commission.

We have concluded that it is necessary to require certain institutional investment managers to report information concerning daily short sales of securities. For purposes of this Order, we believe that section 13(f) of the Exchange Act and Rule 13f-1 provide useful and tested terms and definitions that provide a basis for requiring new disclosure. The Order therefore requires that an institutional investment manager that exercises investment discretion<sup>3</sup> with respect to accounts holding section 13(f) securities<sup>4</sup> having an aggregate fair market value on the last trading day of any month of any calendar year of at

<sup>2</sup> This finding of an "emergency" is solely for purposes of Section 12(k)(2) of the Exchange Act and is not intended to have any other effect or meaning or to confer any right or impose any obligation other than set forth in this Order.

<sup>3</sup> The term "investment discretion" has the same meaning as in Exchange Act Rule 13f-1(b). See 17 CFR 240.13f-1(b).

<sup>4</sup> The term "section 13(f) securities" has the same meaning as in Exchange Act Rule 13f-1(c). See 17 CFR 240.13f-1(c).

<sup>1</sup> This finding of an "emergency" is solely for purposes of Section 12(k)(2) of the Exchange Act and is not intended to have any other effect or meaning or to confer any right or impose any obligation other than set forth in this Order.

<sup>1</sup> See Exchange Act Release No. 58166 (July 15, 2008), Exchange Act Release No. 58572 (September 17, 2008).

least \$100,000,000 must file a new form with the Commission. Specifically, an institutional investment manager who has filed or was required to file a Form 13F for the calendar quarter ended June 30, 2008 under section 13(f) of the Exchange Act and Rule 13f-1(a) thereunder will be required to file a report on new Form SH with the Commission on the first business day<sup>5</sup> of every calendar week immediately following a week in which it effected short sales.

The Form SH, which must be filed electronically and will be publicly available on our EDGAR system,<sup>6</sup> must include disclosure of the number and value of securities sold short for each section 13(f) security, except for short sales in options, and the opening short position, closing short position, largest intraday short position, and the time of the largest intraday short position, for that security during each calendar day of the prior week. No filing, however, will be required when no short sales of a section 13(f) security have been effected since the previous filing of a Form SH. In addition, this disclosure requirement will only apply to short sales effected after the effective date of the Order. Finally, an institutional investment manager need not report short positions otherwise reportable if: (i) The short position in the section 13(f) securities constitutes less than one-quarter of one percent of the class of the issuer's section 13(f) securities issued and outstanding as reported on the issuer's most recent annual or quarterly report, and any current report subsequent thereto, filed with the Commission pursuant to the Exchange Act, unless the manager knows or has reason to believe the information contained therein is inaccurate; and (ii) the fair market value of the short position in the section 13(f) securities is less than \$1,000,000.

We believe that the extraordinary circumstances we now confront require the new disclosure requirements we are imposing today. We also believe such disclosure requirements are in the public interest for the protection of investors and will ensure transparency in short selling.

*It is ordered* that, pursuant to our Section 12(k)(2) powers:

Every institutional investment manager that exercises investment discretion with

respect to accounts holding section 13(f) securities and that has filed or was required to file a Form 13F for the calendar quarter ended June 30, 2008, as required under section 13(f) of the Exchange Act and Rule 13f-1(a) thereunder, must file a report on Form SH with the Commission. The Form SH filing must be made on the first business day of each week immediately following a week in which the institutional investment manager has effected any short sale with respect to any section 13(f) security that is not an option. With respect to each section 13(f) security that is not an option, the Form SH filing must reflect the number and value of securities sold short during the day as well as the opening short position, closing short position, largest intraday short position, and the time of the largest intraday short position, for that security on each calendar day of the prior week in which the institutional investment manager engaged in trading activity with respect to short sales.

Finally, an institutional investment manager need not report short positions otherwise reportable if: (i) The short position in the section 13(f) securities constitutes less than one-quarter of one percent of the class of the issuer's section 13(f) securities issued and outstanding as reported on the issuer's most recent annual or quarterly report, and any current report subsequent thereto, filed with the Commission pursuant to the Exchange Act, unless the manager knows or has reason to believe the information contained therein is inaccurate; and (ii) the fair market value of the short position in the section 13(f) securities is less than \$1,000,000.

*Short sale* has the meaning set forth in Rule 200 of Regulation SHO (17 CFR 242.200), and terms referenced in that provision shall have the same meaning as set forth in Regulation SHO; and *short positions* to be reported are those resulting from "short sales" as that term is defined in SEC Rule 200(a) of Regulation SHO.

*It is further ordered that*, pursuant to our Section 12(k)(2) powers, the text of Form SH be as set forth in the attachment to this Order.

This Order shall be effective at 12:01 a.m. EDT on September 22, 2008, the first Form SH shall be required to be filed on September 29, 2008, and this Order shall terminate at 11:59 p.m. on October 2, 2008 unless further extended by the Commission.

By the Commission.

**J. Lynn Taylor,**

*Assistant Secretary.*

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION,  
WASHINGTON, D.C. 20549**

#### *FORM SH*

INFORMATION REQUIRED OF INSTITUTIONAL INVESTMENT MANAGERS PURSUANT TO EMERGENCY ORDER, SECURITIES EXCHANGE ACT OF 1934 RELEASE NO. 58591, SEPTEMBER 18, 2008

#### GENERAL INSTRUCTIONS

1. *Rule as to Use of Form SH.* Institutional investment managers ("Managers") must use Form SH for reports to the Commission required by the Commission's Emergency Order, Securities Exchange Act of 1934 Release No. 58591, September 18, 2008 ("September 18, 2008 Order"). The September 18, 2008 Order provides that every Manager that exercises investment discretion with respect to accounts holding section 13(f) securities, as defined in paragraph (c) of section 13(f) of the Securities Exchange Act of 1934 [15 U.S.C. 78m(f)] ("Exchange Act"), who has filed or was required to file a Form 13F for the calendar quarter ended June 30, 2008, must file a report on Form SH with the Commission to report certain information about short sales and short positions. The Form SH filing must be made on the Monday (or, if Monday is a federal holiday, the first business day thereafter) of each calendar week immediately following a Form SH reporting period (i.e., the preceding Monday-Sunday, or seven calendar days) in which the Manager has entered into any new short positions or closed part or all of any short positions with respect to any section 13(f) securities except for any short position(s) for options ("SH Short Positions"). The Form SH will report SH Short Positions for the Monday-Sunday immediately preceding the Monday on which the Form SH is due to be filed.

2. *Rules to Prevent Duplicative Reporting.* If two or more Managers, each of which is required by the September 18, 2008 Order to file a report on Form SH for the reporting period, exercise investment discretion with respect to the same securities, only one such Manager must include information in its reports on Form SH.

A Manager having information that is required by the September 18, 2008 Order to be reported on Form SH, and such information is reported by another Manager (or Managers), such Manager must identify the Manager(s) reporting on its behalf in the manner described in Special Instruction 6.

3. *Filing of Form SH.* A Manager must file a Form SH report with the Commission on or before 5:30 p.m. Eastern Standard Time or Eastern Daylight Savings Time, whichever currently is in effect in Washington, DC ("Eastern Time") on the Monday (or, if Monday is a federal holiday, the first business day thereafter) of each week immediately following the preceding seven calendar day period in which the Manager

<sup>5</sup> See Exchange Act Rule 0-2 for a description of the business hours of the Commission. 17 CFR 240.0-2.

<sup>6</sup> No Commission procedure for seeking confidential treatment of information filed with or transmitted to the Commission, such as those in 17 CFR 200.80, 200.83, or 240.24b-2, shall apply to the information that this Order requires to be filed.

has entered into any new SH Short Position(s) or closed part or all of any SH Short Position(s).

4. *Official List of Section 13(f) Securities.* The official list of section 13(f) securities published by the Commission (the "13F List") lists the securities the holdings of which a Manager is to report on Form 13F. See rule 13f-1(c) [17 CFR 240.13f-1(c)]. Form SH filers may rely on the current 13F List in determining whether they need to report on Form SH information about any particular equity security, excluding short positions on options. The 13F List is available on the SEC's website, at <http://www.sec.gov/divisions/investment/13flists.htm>. Paper copies are available at a reasonable fee from the Securities and Exchange Commission, Public Reference Room, 100 F Street, NE, Washington, DC 20549.

#### SPECIAL INSTRUCTIONS

1. This form consists of three parts: the Form SH Cover Page (the "Cover Page"), the Form SH Summary Page (the "Summary Page"), and the Form SH Information Table (the "Information Table").

2. When preparing the report, omit all bracketed text. Include brackets used to form check boxes.

The Cover Page:

3. The period end date used in the report (and in the EDGAR submission header) is the Sunday before the Form SH is filed. The date should name the month, and express the day and year in Arabic numerals, with the year being a four-digit numeral (i.e., 2008).

4. Amendments to a Form SH must either restate the Form SH in its entirety or include only entries that are being reported in addition to those already reported in a current public Form SH for the same period. If the Manager is filing the Form SH report as an amendment, then the Manager must check the amendment box on the Cover Page; enter the amendment number; and check the appropriate box to indicate whether the amendment (a) is a restatement or (b) adds new entries. Each amendment must include a complete Cover Page and, if applicable, a Summary Page and Information Table. Amendments must be filed sequentially.

5. Present the Cover Page and the Summary Page information in the format and order provided in the form. The Cover Page may include information in addition to the required information, so long as the additional information does not, either by its nature, quantity, or manner of presentation, impede the understanding or presentation of the required information. Place all additional information after the signature of the person signing the report (immediately preceding the Report Type section). Do not include any additional information on the Summary Page or in the Information Table.

6. Designate the Report Type for the Form SH by checking the appropriate box in the Report Type section of the Cover Page, and include, where applicable, the List of Other Managers Reporting for this Manager (on the Cover Page), the Summary Page and the Information Table, as follows:

a. If all of the information that a Manager is required by the September 18, 2008 Order to report on Form SH is reported by another

Manager (or Managers), check the box for Report Type "FORM SH NOTICE," include (on the Cover Page) the List of Other Managers Reporting for this Manager, and omit both the Summary Page and the Information Table.

b. If all of the information that a Manager is required by the September 18, 2008 Order to report on Form SH is reported in this report, check the box for Report Type "FORM SH ENTRIES REPORT," omit from the Cover Page the List of Other Managers Reporting for this Manager, and include both the Summary Page and the Information Table.

c. If only a part of the information that a Manager is required by the September 18, 2008 Order to report on Form SH is reported in this report, check the box for Report Type "FORM SH COMBINATION REPORT," include (on the Cover Page) the List of Other Managers Reporting for this Manager, and include both the Summary Page and the Information Table.

#### Summary Page

7. Include on the Summary Page the Report Summary, containing the Number of Other Included Managers, the Information Table Entry Total and the Information Table Value Total.

a. Enter as the Number of Other Included Managers the total number of other Managers listed in the List of Other Included Managers on the Summary Page, not counting the Manager filing this report. See Special Instruction 8. If none, enter the number zero ("0").

b. Enter as the Information Table Entry Total the total number of line entries providing issuer information included in the Information Table.

c. Enter as the Information Table Value Total the aggregate fair market value in U.S. dollars of all securities sold short during the reporting period that are reported in this report, i.e., the total for Column 5 (Value of Securities Sold Short (Day)) of all line entries in the Information Table. The Manager must express this total as a rounded figure, corresponding to the individual Column 4 entries in the Information Table. See Special Instruction 9.

8. Include on the Summary Page the List of Other Included Managers. Use the title, column headings and format provided.

a. If this Form SH does not report the information that a Manager is required by the September 18, 2008 Order to report on Form SH of any Manager other than the Manager filing this report, enter the word "NONE" under the title and omit the column headings and list entries.

b. If this Form SH reports the information that a Manager is required by the September 18, 2008 Order to report on Form SH of one or more Managers other than the Manager filing this report, enter in the List of Other Included Managers all such Managers together with their respective Form 13F file numbers, if known. (The Form 13F file numbers are assigned to Managers when they file their first Form 13F.) Assign a number to each Manager in the List of Other Included Managers, and present the list in sequential order. The numbers need not be consecutive. The List of Other Managers cannot include the Manager filing this report.

#### Information Table

9. In determining the fair market value of securities sold short, a Manager must use the market price of the section 13(f) securities as of the close of floor trading on the New York Stock Exchange ("NYSE") for the day in question. If the securities are sold short on a non-business day, a Manager must use the market price of the section 13(f) securities as of the close of the NYSE for the most recent business day. Such market closing time shall be used to determine the price for all SH Short Positions, irrespective of which U.S. equity market the issuer trades on. Enter values rounded to the nearest one thousand dollars (with "000" omitted).

10. Furnish the Information Table using the table title, column headings and format provided. Provide column headings once at the beginning of the Information Table; repetition of column headings on subsequent pages is not required. Present the table in accordance with the column instructions provided in Special Instructions 10.a.i through 10.a.viii. Do not include any additional information in the Information Table. Begin the Information Table on a new page; do not include any portion of the Information Table on either the Cover Page or the Summary Page.

a. Instructions for each column in the Information Table:

i. *Column 1. Name of Issuer.* Enter in Column 1 the name of the issuer as it appears in the current official list of Section 13(f) Securities published by the Commission in accordance with rule 13f-1(c) (the "13F List"). Reasonable abbreviations are permitted.

ii. *Column 2. CUSIP Number.* Enter in Column 2 the nine (9) digit CUSIP number of the security for which information is being reported.

iii. *Column 3. Short Position (Start of Day).* Enter in Column 3 the number of securities that represent the Manager's short position in the issuer as of the start of each calendar day (or days, in the case of Saturday and Sunday) during the reporting period. The Short Position (Start of Day) for Monday, September 22, 2008 shall be zero.

iv. *Column 4. Number of Securities Sold Short (Day).* Enter in Column 4 the aggregate number of securities in the issuer that the Manager sold short for each calendar day (or days, in the case of Saturday and Sunday) during the reporting period.

v. *Column 5. Value of Securities Sold Short (Day).* Enter in Column 5 the market value in U.S. dollars of the number of securities reported in Column 4. In valuing such securities, use the fair market value for each security, as set forth in Special Instruction 9, *supra*.

vi. *Column 6. Short Position (End of Day).* Enter in Column 6 the number of securities that represent the Manager's short position in the issuer as of the end each calendar day (or days, in the case of Saturday and Sunday) during the reporting period.

vii. *Column 7. Largest Intra-Day Short Position.* Enter in Column 7 the number of securities that represent the Manager's largest single short position in the issuer for each calendar day (or days, in the case of Saturday and Sunday) during the reporting period.

viii. *Column 8. Time of Day of Largest Intra-Day Short Position.* Enter in Column 7 the time of day (Eastern Time) that the Manager had the largest single short position in the issuer, as reported in Column 7.

11. Preparation of the electronic filing:

a. No line on the Cover Page or the Summary Page may exceed 80 characters in length. See rule 305 of Regulation S-T [17 CFR 232.305].

b. No line in the Form SH Information Table may exceed 132 characters in length. See rule 305 of Regulation S-T [17 CFR 232.305].

c. If the Form SH Report Type is "SH ENTRIES REPORT" or "SH COMBINATION REPORT," then place one EDGAR <PAGE> tag at the end of the Cover Page and one <PAGE> tag at the end of the Summary Page. Additional EDGAR <PAGE> tags are not required. Those electing to include additional <PAGE> tags should, for each page containing a <PAGE> tag, include no more than sixty (60) lines per page, including the line on which the <PAGE> tag is placed.

d. In preparing the Form SH report for electronic filing, a Manager may omit underscoring used in the form to indicate the placement of information that the Manager is to furnish.

e. Use the following EDGAR submission types for the following Form SH Report Types:

| Form SH report type         | EDGAR submission type |
|-----------------------------|-----------------------|
| FORM SH ENTRIES REPORT:     |                       |
| Initial Filing .....        | SH-ER.                |
| Amendments .....            | SH-ER/A.              |
| FORM SH NOTICE:             |                       |
| Initial Filing .....        | SH-NT.                |
| Amendments .....            | SH-NT/A.              |
| FORM SH COMBINATION REPORT: |                       |
| Initial Filing .....        | SH-ER.                |

| Form SH report type | EDGAR submission type |
|---------------------|-----------------------|
| Amendments .....    | SH-ER/A.              |

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION,  
Washington, DC 20549**

*FORM SH*

FORM SH COVER PAGE

Report for the Period Ended:

[Month, Day, Year]

Check here if Amendment ☐:

Amendment Number: \_\_\_\_\_

This Amendment (Check only one):

☐ is a restatement.

☐ adds new entries.

Institutional Investment Manager Filing this Report:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Form 13F File Number: 28- \_\_\_\_\_

The institutional investment manager filing this report and the person by whom it is signed hereby represent that the person signing the report is authorized to submit it, that all information contained herein is true, correct and complete, and that it is understood that all required items, statements, schedules, lists, and tables, are considered integral parts of this form.

Person Signing this Report on Behalf of Reporting Manager:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Phone: \_\_\_\_\_

Signature, Place, and Date of Signing:

[Signature]

[City, State]

[Date]

Report Type (Check only one):

☐ FORM SH ENTRIES REPORT. (Check here if all entries of this reporting manager are reported in this report.)

☐ FORM SH NOTICE. (Check here if no entries reported are in this report, and all entries are reported by other reporting manager(s).)

☐ FORM SH COMBINATION REPORT. (Check here if a portion of the entries for this reporting manager is reported in this report and a portion is reported by other reporting manager(s).)

List of Other Managers Reporting for this Manager:

[If there are no entries in this list, omit this section.]

Form 13F File Number

28- \_\_\_\_\_

Name \_\_\_\_\_

[Repeat as necessary.]

FORM SH SUMMARY PAGE

Report Summary:

Number of Other Included Managers:

Form SH Information Table Entry Total:

Form SH Information Table Value Total: (thousands) \_\_\_\_\_

List of Other Included Managers:

Provide a numbered list of the name(s) and Form 13F file number(s) of all institutional investment managers with respect to which this Form SH report is filed, other than the manager filing this report.

[If there are no entries in this list, state "NONE" and omit the column headings and list entries.]

No. \_\_\_\_\_

Form 13F File Number Name

28- \_\_\_\_\_

Name \_\_\_\_\_

[Repeat as necessary.]

**FORM SH INFORMATION TABLE—PAGE 1**

MONDAY, [Month, Day, Year]

| Name of issuer | CUSIP | Short position<br>(start of day) | Number of<br>securities sold<br>short (day) | Value of<br>securities sold<br>short (day) | Short position<br>(end of day) | Largest intra-<br>day short<br>position | Time of day of<br>largest intra-<br>day short<br>position |
|----------------|-------|----------------------------------|---|--|--------------------------------|---|---|
|----------------|-------|----------------------------------|---|--|--------------------------------|---|---|

## FORM SH INFORMATION TABLE—PAGE 2

TUESDAY, [Month, Day, Year]

| Name of issuer | CUSIP | Short position<br>(start of day) | Number of<br>securities sold<br>short (day) | Value of<br>securities sold<br>short (day) | Short position<br>(end of day) | Largest intra-<br>day short<br>position | Time of day of<br>largest intra-<br>day short<br>Position |
|----------------|-------|----------------------------------|---|--|--------------------------------|---|---|
|----------------|-------|----------------------------------|---|--|--------------------------------|---|---|

## FORM SH INFORMATION TABLE—PAGE 3

WEDNESDAY, [Month, Day, Year]

| Name of issuer | CUSIP | Short position<br>(start of day) | Number of<br>securities sold<br>short (day) | Value of<br>securities sold<br>short (day) | Short position<br>(end of day) | Largest intra-<br>day short<br>position | Time of day of<br>largest intra-<br>day short<br>position |
|----------------|-------|----------------------------------|---|--|--------------------------------|---|---|
|----------------|-------|----------------------------------|---|--|--------------------------------|---|---|

## FORM SH INFORMATION TABLE—PAGE 4

THURSDAY, [Month, Day, Year]

| Name of issuer | CUSIP | Short position<br>(start of day) | Number of<br>securities sold<br>short (day) | Value of<br>securities sold<br>short (day) | Short position<br>(end of day) | Largest intra-<br>day short<br>position | Time of day of<br>largest intra-<br>day short<br>position |
|----------------|-------|----------------------------------|---|--|--------------------------------|---|---|
|----------------|-------|----------------------------------|---|--|--------------------------------|---|---|

FORM SH INFORMATION TABLE—PAGE 5

FRIDAY, [Month, Day, Year]

| Name of issuer | CUSIP | Short position<br>(start of day) | Number of<br>securities sold<br>short (day) | Value of<br>securities sold<br>short (day) | Short position<br>(end of day) | Largest intra-<br>day short<br>position | Time of day of<br>largest intra-<br>day short<br>position |
|----------------|-------|----------------------------------|---|--|--------------------------------|---|---|
|----------------|-------|----------------------------------|---|--|--------------------------------|---|---|

FORM SH INFORMATION TABLE—PAGE 6

SATURDAY-SUNDAY, [Month, Day, Year]

| Name of issuer | CUSIP | Short position<br>(start of day) | Number of<br>securities sold<br>short (day) | Value of<br>securities sold<br>short (day) | Short position<br>(end of day) | Largest intra-<br>day short<br>position | Time of day of<br>largest intra-<br>day short<br>position |
|----------------|-------|----------------------------------|---|--|--------------------------------|---|---|
|----------------|-------|----------------------------------|---|--|--------------------------------|---|---|

[FR Doc. E8-22487 Filed 9-23-08; 8:45 am]  
BILLING CODE 8010-01-P

**SECURITIES AND EXCHANGE COMMISSION**  
[Release No. 34-58563; File No. 4-569]  
**Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d-2; Notice of Filing of Proposed Plan for the Allocation of Regulatory Responsibilities Between the Financial Industry Regulatory Authority, Inc. and BATS Exchange, Inc.**  
September 17, 2008.  
Pursuant to section 17(d) of the Securities Exchange Act of 1934

(“Act”),<sup>1</sup> and Rule 17d-2 thereunder,<sup>2</sup> notice is hereby given that on August 27, 2008, BATS Exchange, Inc. (“BATS”) and the Financial Industry Regulatory Authority, Inc. (“FINRA”) (together with BATS, the “Parties”) filed with the Securities and Exchange Commission (“Commission” or “SEC”) a plan for the allocation of regulatory responsibilities, dated August 25, 2008 (“17d-2 Plan” or the “Plan”). The Commission is publishing this notice to

<sup>1</sup> 15 U.S.C. 78q(d).  
<sup>2</sup> 17 CFR 240.17d-2.