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**Stanford K. McCoy,**

*Assistant U.S. Trade Representative for Intellectual Property and Innovation.*

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## SECURITIES AND EXCHANGE COMMISSION

[Securities Exchange Act of 1934 Release No. 58166/July 15, 2008]

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

False rumors can lead to a loss of confidence in our markets. Such loss of confidence can lead to panic selling, which may be further exacerbated by “naked” short selling. As a result, the prices of securities may artificially and unnecessarily decline well below the price level that would have resulted from the normal price discovery process. If significant financial institutions are involved, this chain of events can threaten disruption of our markets.

The events preceding the sale of The Bear Stearns Companies Inc. are illustrative of the market impact of rumors. During the week of March 10, 2008, rumors spread about liquidity problems at Bear Stearns, which eroded investor confidence in the firm. As Bear Stearns’ stock price fell, its counterparties became concerned, and a crisis of confidence occurred late in the week. In particular, counterparties to Bear Stearns were unwilling to make secured funding available to Bear Stearns on customary terms. In light of the potentially systemic consequences of a failure of Bear Stearns, the Federal Reserve took emergency action.

The Commission has taken a series of actions to address concerns about rumors. For example, in April, 2008, we

charged Paul S. Berliner, a trader, with securities fraud and market manipulation for intentionally disseminating a false rumor concerning The Blackstone Group’s acquisition of Alliance Data Systems Corp (“ADS”). The Commission alleged that this false rumor caused the price of ADS stock to plummet, and that Berliner profited by short selling ADS stock and covering those sales as the false rumor caused the price of ADS stock to fall. See <http://www.sec.gov/litigation/litreleases/2008/lr20537.htm>.

As another example, on July 13, 2008, the Commission announced that the SEC and other securities regulators would immediately conduct examinations aimed at the prevention of the intentional spreading of false information intended to manipulate securities prices. The examinations will be conducted by the SEC’s Office of Compliance Inspections and Examinations, as well as the Financial Industry Regulatory Authority, Inc. and New York Stock Exchange Regulation, Inc. See <http://www.sec.gov/news/press/2008/2008-140.htm>.

We intend these and similar actions to provide powerful disincentives to those who might otherwise engage in illegal market manipulation through the dissemination of false rumors and thereby over time to diminish the effect of these activities on our markets. In recent days, however, false rumors have continued to threaten significant market disruption. For example, press reports have described rumors regarding the unwillingness of key counterparties to deal with certain financial institutions. There also have been rumors that financial institutions are facing liquidity problems.

As a result of these recent developments, the Commission has concluded that there now exists a substantial threat 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

<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.

to matters or actions subject to regulation by the Commission.

In these unusual and extraordinary circumstances, we have concluded that requiring all persons to borrow or arrange to borrow the securities identified in Appendix A prior to effecting an order for a short sale of those securities is 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. This emergency requirement will eliminate any possibility that naked short selling may contribute to the disruption of markets in these securities. We described in the releases in which we proposed and adopted Regulation SHO the bases for the current requirements Regulation SHO imposes. We believe, however, that the unusual circumstances we now confront require the temporarily enhanced requirements we are imposing today.

It is ordered that, pursuant to our Section 12(k)(2) powers, in connection with transactions in the publicly traded securities of substantial financial firms, which entities are identified in Appendix A, no person may effect a short sale<sup>2</sup> in these securities using the means or instrumentalities of interstate commerce unless such person or its agent has borrowed or arranged to borrow the security or otherwise has the security available to borrow in its inventory prior to effecting such short sale and delivers the security on settlement date.<sup>3</sup>

In order to allow market participants time to adjust their operations to implement the enhanced requirements, this Order shall take effect at 12:01 a.m. EDT on Monday, July 21, 2008. This Order shall terminate at 11:59 p.m. EDT on Tuesday, July 29, 2008 unless further extended by the Commission.

By the Commission.

**Florence E. Harmon,**  
*Acting Secretary.*

#### APPENDIX A

Company	Ticker symbol(s)
BNP Paribas Securities Corp. ....	BNPQF or BNPQY
Bank of America Corporation .....	BAC

<sup>2</sup> The definition of “short sale” shall be the same definition used in Rule 200(a) of Regulation SHO and the requirements for marking orders “long” or “short” shall be the same as provided in Regulation SHO.

<sup>3</sup> Short sales to be effected as a result of a put options exercise are subject to this Order. In addition, we note that short sales used to hedge would also be subject to this Order.

## APPENDIX A—Continued

Company	Ticker symbol(s)
Barclays PLC .....	BCS
Citigroup Inc. ....	C
Credit Suisse Group .....	CS
Daiwa Securities Group Inc. ....	DSECY
Deutsche Bank Group AG .....	DB
Allianz SE .....	AZ
Goldman, Sachs Group Inc .....	GS
Royal Bank ADS .....	RBS
HSBC Holdings PLC ADS .....	HBC and HSI
J.P. Morgan Chase & Co. ....	JPM
Lehman Brothers Holdings Inc. ....	LEH
Merrill Lynch & Co., Inc. ....	MER
Mizuho Financial Group, Inc. ....	MFG
Morgan Stanley .....	MS
UBS AG .....	UBS
Freddie Mac .....	FRE
Fannie Mae .....	FNM

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-58161; File No. SR-Amex-2008-39]

**Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Listing and Trading of Trust Issued Receipts That Directly Hold Investments in Certain Financial Instruments and To Permit the Listing and Trading of Shares of Fourteen Funds of the Commodities and Currency Trust**

July 15, 2008.

**I. Introduction**

On May 9, 2008, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change seeking to: (1) Amend Commentary .07 to Amex Rule 1202 to permit the listing and trading of certain trust issued receipts (“TIRs”) that directly hold any combination of investments including cash, securities, options on securities and indices, commodities, futures contracts, options on futures contracts, forward contracts, equity caps, collars, and floors, and swap agreements (collectively, “Financial Instruments”); and (2) list and trade the shares (“Shares”) of

fourteen funds (“Funds”) of the Commodities and Currency Trust (“Trust”) based on certain commodity indexes, commodities, and currencies pursuant to Commentary .07 to Amex Rule 1202, as proposed to be amended. On June 4, 2008, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change was published for comment in the **Federal Register** on June 12, 2008.<sup>3</sup> The Commission received no comments regarding the proposal. This order approves the proposed rule change, as modified by Amendment No. 1 thereto.

**II. Description of the Proposal**

The Exchange proposes to amend Commentary .07 to Amex Rule 1202 to permit the listing and trading of certain TIRs that directly hold any combination of investments in Financial Instruments.<sup>4</sup> In addition, the Exchange proposes to list and trade the Shares of the Funds pursuant to Commentary .07 to Amex Rule 1202, as proposed to be amended.

*Proposed Amendments to Commentary .07 to Amex Rule 1202*

Commentary .07 to Amex Rule 1202 currently permits the Exchange to list and trade TIRs where the underlying trust holds “Investment Shares.”<sup>5</sup> As a result, TIRs that are listed pursuant to current Commentary .07 to Amex Rule 1202 are required to be in the form of a “master-feeder” structure, whereby the listed security holds or invests in the security of the fund that is investing in the prescribed financial instruments.

As a result of a recent interpretation by the staff of the Internal Revenue Service relating to the inability to interpose a grantor trust in order to utilize a certain tax reporting form, the Exchange has been notified that the need for the current master-feeder structure set forth in Commentary .07 to Amex Rule 1202 is no longer necessary.

<sup>3</sup> See Securities Exchange Act Release No. 57932 (June 5, 2008), 73 FR 33467 (“Notice”).

<sup>4</sup> The Exchange represents that permissible securities in connection with Financial Instruments would not include foreign equity securities.

<sup>5</sup> Investment Shares are defined in Commentary .07(b)(1) to Amex Rule 1202 as securities that are (a) issued by a trust, partnership, commodity pool, or other similar entity that invests in any combination of futures contracts, options on futures contracts, forward contracts, commodities, swaps or high credit quality short-term fixed-income securities and (b) issued and redeemed daily at net asset value (“NAV”) in amounts correlating to the number of receipts created and redeemed in a specified aggregate minimum number. See Commentary .07(a) to Amex Rule 1202. See also Securities Exchange Act Release No. 53105 (January 11, 2006), 71 FR 3129 (January 19, 2006) (SR-Amex 2005-059) (approving, among other things, the adoption of Commentary .07 to Amex Rule 1202).

The Exchange represents that there are no substantive differences between the proposed structure (TIRs directly holding Financial Instruments) and the current master-feeder structure (TIRs holding Investment Shares that invest in certain financial instruments). Amex states that its proposal would provide an alternative for issuers so that TIRs may be listed and traded on the Exchange that directly invest in or hold Financial Instruments, rather than through an additional security of a fund.

Specifically, the proposal seeks to expand the application of Commentary .07 to Amex Rule 1202 to both Investment Shares and Financial Instruments. Accordingly, new Commentary .07(b)(4) to Amex Rule 1202 would be added to define “Financial Instrument” as any combination of cash, securities, options on securities and indices, commodities, futures contracts, options on futures contracts, forward contracts, equity caps, collars, and floors, and swap agreements. Amex seeks to add the term “Financial Instrument” to where the term “Investment Shares” appears throughout Commentary .07 to Amex Rule 1202 to indicate that TIRs directly holding Financial Instruments may be listed and traded on the Exchange.

*Proposal To List and Trade the Shares of the Funds*

The Shares of each Fund will generally be subject to the Amex rules applicable to TIRs. The Shares represent common units of fractional undivided beneficial interests in, and ownership of, each Fund. Each Fund will invest the proceeds of its offering of Shares in various Financial Instruments that will provide exposure to the Funds’ underlying currency, commodity, or commodity index, as applicable. In addition, the Funds will also maintain cash positions in cash or money market instruments for the purpose of collateralizing such positions taken in the Financial Instruments.

Shares of seven of the Funds of the Trust will be designated as Ultra ProShares while the Shares of the other seven Funds of the Trust will be designated as UltraShort ProShares.<sup>6</sup> Each of the Funds will have a distinct

<sup>6</sup> The Funds are the: (1) Ultra DJ-AIG Commodity ProShares; (2) UltraShort DJ-AIG Commodity ProShares; (3) Ultra DJ-AIG Agriculture ProShares; (4) UltraShort DJ-AIG Agriculture ProShares; (5) Ultra DJ-AIG Crude Oil ProShares; (6) UltraShort DJ-AIG Crude Oil ProShares; (7) Ultra Gold ProShares; (8) UltraShort Gold ProShares; (9) Ultra Silver ProShares; (10) UltraShort Silver ProShares; (11) Ultra Euro ProShares; (12) UltraShort Euro ProShares; (13) Ultra Yen ProShares; and (14) UltraShort Yen ProShares. See Exhibit A to Amex’s proposed rule change on Form 19b-4.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.