

IN THE MATTER OF THE *SECURITIES ACT*,  
S.N.B. 2004, c. S-5.5 (*the Act*)

AND IN THE MATTER OF

**FINANCIAL SECTOR ISSUERS**  
(as detailed on Schedule A attached)

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**VARIATION ORDER**

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**WHEREAS** on 22 September 2008, the New Brunswick Securities Commission (the Commission) issued a decision with respect to the Financial Sector Issuers set forth on Schedule A pursuant to subsection 195.5(1) and subparagraph 184(1)(c)(i) of the *Act* (Decision) on similar terms as the order made by the Ontario Securities Commission on 19 September 2008 (OSC Order);

**AND WHEREAS** on 22 September 2008 the OSC issued an amendment to the OSC Order (OSC Amending Order) to address current and anticipated technical and operational concerns resulting from the requirements of the OSC Order;

**AND WHEREAS**, pursuant to subsection 206(1) of the *Act*, the Commission may make an order varying or revoking a decision of the Commission on the application of the Executive Director if in the Commission's opinion the order would not be prejudicial to the public interest;

**AND WHEREAS** the Executive Director has applied to the Commission for an order varying the Decision to reflect the terms of the OSC Amending Order and to address certain other technical and operational concerns;

**AND WHEREAS** the Commission has determined that it is not prejudicial to the public interest to issue an order varying the Decision;

**IT IS ORDERED**, pursuant to subsection 206(1) of the *Act*, that the Decision be varied and restated as follows:

IN THE MATTER OF THE *SECURITIES ACT*,  
S.N.B. 2004, c. S-5.5 (*the Act*)

AND IN THE MATTER OF

**FINANCIAL SECTOR ISSUERS**  
(as detailed on Schedule A attached)

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**DECISION**

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**WHEREAS** on 19 September 2008 the Ontario Securities Commission issued an order under section 127 of the Ontario *Securities Act*, R.S.O. 1990, s. S.5, which was amended on 22 September 2008 (Ontario Order) temporarily prohibiting any short sale in any common equity securities of the financial sector issuers listed in Schedule A (the Financial Sector Issuers).

**AND WHEREAS** under subsection 195.5(1) and subparagraph 184(1)(c)(i) the Commission is empowered to make a decision regarding a person, trade or security on the basis that an extra-provincial securities commission has made a substantially similar decision regarding the person, trade or security;

**AND WHEREAS** the Commission is of the opinion that it is in the public interest to make a decision on the same terms as the Ontario Order;

**NOW THEREFORE IT IS THE DECISION OF THE COMMISSION** pursuant to subsection 195.5(1) and subparagraph 184(1)(c)(i) of the *Act* that, for as long as the Ontario Order (as from time to time extended or made permanent) remains in effect, trading that constitutes a short sale (as defined in Schedule B) in the securities of the Financial Sector Issuers is prohibited, unless the short sale is:

1. conducted in accordance with UMIR Rule 3.1 *Restrictions on Short Selling*, sections 2(a), (b), (d) and (g) provided, however, a dealer fulfilling market maker obligations (market maker) may not effect a short sale in the common equity securities of the Financial Sector Issuers if the market maker ought reasonably to know that the client's or counterparty's transaction will result in the client or counterparty establishing or increasing an economic net short position (i.e.

through actual positions, derivatives, or otherwise) in the issued share capital of a Financial Sector Issuer covered by this Decision;

2. conducted by a registered dealer acting as principal to facilitate a transaction with a client that has a current market value of \$200,000 or more in a single transaction, or in several transactions at approximately the same time, provided that the position is liquidated or hedged as soon as possible.
3. conducted in order to comply with the UMIR Rule 5.2 *Best Price Obligation*;
4. conducted by a person or company as a result of the automatic exercise or assignment of an equity option, or in connection with a settlement of a futures contract, held prior to the effectiveness of this order decision due to expiration of the option or futures contract;
5. a sale of a security identified in paragraph (g) of Schedule B, where the security is beneficially owned by the seller and the sale is made under an exemption from the prospectus requirements in accordance with applicable securities legislation; or
6. conducted to adjust a pre-existing hedged derivative position in order to maintain the risk exposure that existed at the time the Original Decision became effective.

**DATED at the City of Saint John, New Brunswick, this 23rd day of September 2008.**

"original signed by Anne La Forest"

"original signed by Donne W. Smith"

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## Schedule A

### List of Financial Sector Issuers

<u>Name</u>	<u>Root Ticker</u>
Aberdeen Asia-Pacific Income Investment Company Ltd.	FAP
Bank of Montreal	BMO
Bank of Nova Scotia (The)	BNS
Canadian Imperial Bank of Commerce	CM
Fairfax Financial Holdings Limited	FFH
Kingsway Financial Services Inc.	KFS
Manulife Financial Corporation	MFC
Quest Capital Corp.	QC
Royal Bank of Canada	RY
Sun Life Financial Inc.	SLF
Thomas Weisel Partners Group Inc.	TWP
Toronto-Dominion Bank (The)	TD
Merrill Lynch & Co., Canada Ltd.	MLC

## Schedule B

“short sale” means a sale of a security, other than a derivative instrument, which the seller does not own either directly or through an agent or trustee and, for this purpose, a seller shall be considered to own a security if the seller:

- (a) has purchased or has entered into an unconditional contract to purchase the security, but has not yet received delivery of the security;
- (b) has tendered such other security for conversion or exchange or has issued irrevocable instructions to convert or exchange such other security;
- (c) has an option to purchase the security and has exercised the option;
- (d) has a right or warrant to subscribe for the security and has exercised the right or warrant; or
- (e) is making a sale of a security that trades on a when issued basis and the seller has entered into a contract to purchase such security which is binding on both parties and subject only to the condition of issuance of distribution of the security,

but a seller shall be considered not to own a security if:

- (f) the seller has borrowed the security to be delivered on the settlement of the trade and the seller is not otherwise considered to own the security in accordance with this definition;
- (g) the security held by the seller is subject to any restriction on sale imposed by applicable securities legislation or by an Exchange or QTRS as a condition of the listing or quoting of the security; or
- (h) the settlement date or issuance date pursuant to:
  - (i) an unconditional contract to purchase,
  - (ii) a tender of a security for conversion or exchange,
  - (iii) an exercise of an option, or
  - (iv) an exercise of a right or warrant

would, in the ordinary course, be after the date for settlement of the sale.

*Terms used in this schedule that are defined in the Universal Market Integrity Rules (UMIR) have the meaning ascribed to them in UMIR.*