

ASIC CLASS ORDER [CO 09/1063] EXPLANATORY STATEMENT

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

The Australian Securities and Investments Commission (*ASIC*) makes ASIC Class Order [CO 09/1063] under paragraphs 1020F(1)(a) and (c) of the *Corporations Act 2001* (*Act*).

Paragraph 1020F(1)(a) provides that ASIC may exempt a person or class of persons from all or specified provisions of Part 7.9 of the Act.

Paragraph 1020F(1)(c) provides that ASIC may declare that Part 7.9 applies in relation to a class of persons or financial products as if specified provisions of Part 7.9 were omitted, modified or varied as specified in the declaration.

1. Background

ASIC Class Order [CO 08/751]

In September 2008, ASIC Class Order [CO 08/751] introduced an interim measure to require reporting of covered short sales. A covered short sale is a sale of section 1020B products where, at the time of the sale, the person making the sale has a presently exercisable and unconditional right to vest the products in the buyer because of a securities lending arrangement entered into before that time.

A permanent regime for reporting of covered short sale transactions (set out in new Division 5B of Part 7.9 of the Act and Division 15 of the *Corporations Regulations 2001*) will commence on commencement of Schedule 3 to the *Corporations Amendment (Short Selling) Act 2008* (*Short Selling Act*) (that is, 11 December 2009).

ASIC Class Order [CO 08/764]

ASIC Class Order [CO 08/764] has the effect of exempting a person from having to comply with s1020B(2) of the Act (that is, the naked short selling prohibition) in relation to a sale (*naked ETO short sale*) of a security or managed investment product where the transaction effecting the sale of the product is the result of the exercise of an ASX exchange-traded option.

A naked ETO short sale is a reportable short sale under [CO 08/751]. Conditions to [CO 08/764] require clients and market participants to take certain steps to facilitate reporting of naked ETO short sales to ASX (e.g. a client must inform the market participant that the sale is a naked ETO short sale).

2. Purpose of the class order

New Division 5B of Part 7.9 of the Act will effectively replicate the existing reporting requirements for transactional information contained in [CO 08/751]. Accordingly, the interim reporting measures set out in [CO 08/751] will no longer be required.

As Division 5B of Part 7.9 of the Act will not require reporting of naked ETO short sales, the conditions in [CO 08/764] that require clients and market participants to take steps to facilitate such reporting will be redundant.

3. Operation of the class order

This instrument:

1. revokes [CO 08/751]; and
2. omits paragraphs 5 to 9 of [CO 08/764].

4. Commencement

This instrument will commence on the commencement of Schedule 3 to the Short Selling Act.

5. Consultation

ASIC did not consult with outside parties because CO [09/1063] is considered to be minor and machinery in nature.