

# ASIC Class Order [CO 10/29]

## Short selling position reporting regime

This instrument has effect under s1020F(1)(c) of the *Corporations Act 2001*.

This compilation was prepared on 17 January 2011 taking into account amendments up to [CO 10/1037]. See the table at the end of this class order.

Prepared by the Australian Securities and Investments Commission.

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### Australian Securities and Investments Commission Corporations Act 2001 – Paragraph 1020F(1)(c) – Declaration

#### Enabling legislation

1. The Australian Securities and Investments Commission makes this instrument under paragraph 1020F(1)(c) of the *Corporations Act 2001 (Act)*.

#### Title

2. This instrument is ASIC Class Order [CO 10/29].

#### Commencement

3. This instrument commences on the later of:
  - (a) the day the instrument is registered under the *Legislative Instruments Act 2003*; and
  - (b) the commencement of Schedule 2 to the *Corporations Amendment Regulations 2009 (No. 8)*.

Note: An instrument is registered when it is recorded on the Federal Register of Legislative Instruments (*FRLI*) in electronic form: see *Legislative Instruments Act 2003*, s 4 (definition of *register*). The FRLI may be accessed at <http://www.frli.gov.au/>.

#### Declaration

4. Part 7.9 of the Act applies in relation to all persons as if Division 15 of Part 7.9 of the *Corporations Regulations 2001 (Regulations)* were modified or varied as follows:
  - (a) in subregulation 7.9.99(1) omit the definition of *reporting day*, substitute:

“*reporting day*, in relation to a short position, means a day that a licensed market that has admitted to quotation the

section 1020B product is open for trading.”;

(aaa) omit subregulation 7.9.99(2), substitute:

“(2) In this Division, a *short position* is a position in relation to a section 1020B product in a listed entity where the quantity of the product which a person, acting in a particular capacity, has is less than the quantity of the product which the person, acting in the same capacity, has an obligation to deliver.

Note: A person may have more than one position in relation to the product on a particular day. For example, a person will have two positions in relation to the product if the person, acting in a particular capacity, has a position and the person, acting in a different capacity, also has a position.”;

(aa) omit paragraph 7.9.99(3)(b), substitute:

“(aa) the person holds the product on behalf of another person except where that other person has the sole discretion to decide whether the product will be sold; or

(b) another person is holding the product on the person’s behalf but only where the person has the sole discretion to decide whether the product will be sold; or”;

(ab) omit paragraph 7.9.99(4)(b), substitute:

“(b) has a contingent or non-contingent obligation to vest title in a lender under a securities lending arrangement; or”;

(ac) after subregulation 7.9.99(4) insert:

“(4A) In subregulation (2), the person has the product or has an obligation to deliver the product only if the person is acting in one or more of the following capacities:

(a) the person is acting on their own behalf; or

(b) the person is acting on behalf of another person except where that other person has the sole discretion to decide whether the product will be sold; or

(c) another person is acting on behalf of the person but only where the person has the sole discretion to decide whether the product will be sold.

(4B) For the purposes of subregulation (2):

(a) subject to paragraph (b), the capacities referred to in each of the paragraphs in subregulation (4A) are taken to be separate capacities;

- (b) where a person is acting on their own behalf under paragraph (4A)(a) and another person is acting on the person's behalf under paragraph (4A)(c), the person is taken to be acting in the same capacity; and
  - (c) in paragraph (4A)(b), where a person is acting on behalf of a person under an arrangement and is acting on behalf of another person under a different arrangement, the person is taken to be acting in a different capacity for each arrangement.”;
- (b) in paragraph 7.9.100(1)(d) omit “the close of business”, substitute “7 pm”;
- (c) after subregulation 7.9.100(1) insert:
- “(1A) A seller is not required to give the particulars mentioned in paragraph (1)(d) in relation to an agreement to sell entered into before 1 June 2010.”;
- (ca) after subregulation 7.9.100(1) insert:
- “(1B) For the purposes of paragraph (1)(d), the short position in relation to a section 1020B product is to be calculated by reference to both of the following:
- (a) the section 1020B product for which the seller has a presently exercisable and unconditional right to vest in the buyer under a securities lending arrangement;
  - (b) the section 1020B product for which the seller does not have a presently exercisable and unconditional right to vest in a buyer but who does not have to comply with subsection 1020B(2) of the Act in relation to the sale.”;
- (d) omit subregulation 7.9.100A(1), substitute:
- “(1) If a seller has a short position which arises from an agreement to sell, entered into before 1 June 2010, the seller must:
- (a) give particulars about the short position as at 7 pm on 1 June 2010 on or before 9 am on 4 June 2010; and
  - (b) give particulars about the short position as at 7pm on each subsequent day after 1 June 2010 on or before 9 am on the third reporting day after that subsequent day as long as the seller has a short position.”; and

(da) in subregulation 7.9.102(1A) after “under section 1020AB of the Act” (twice occurring) insert “(or in accordance with a legislative instrument made under section 1020F of the Act)”;

(e) after subregulation 7.9.102(1A) insert:

“(1B) ASIC is not required to publicly disclose the particulars mentioned in subregulation (1A) in relation to information given to it before 21 June 2010.”.

5. Part 7.9 of the Act applies in relation to all persons as if section 1020AB were modified or varied by omitting paragraph (3)(a) and substituting:

“(a) give the entity mentioned in subsection (4) particulars specified in the regulations in relation to:

(i) the circumstances mentioned in paragraphs (1)(a), (b) and (c); or

(ii) the sale of a section 1020B product for which the seller does not have a presently exercisable and unconditional right to vest in a buyer but who does not have to comply with subsection 1020B(2) in relation to the sale; and”.

## Notes to ASIC Class Order [CO 10/29]

### Note 1

ASIC Class Order [CO 10/29] (in force under s1020F(1)(c) of the *Corporations Act 2001*) as shown in this compilation comprises that Class Order amended as indicated in the tables below.

### Table of Instruments

Instrument number	Date of FRLI registration	Date of commencement	Application, saving or transitional provisions
[CO 10/29]	31/3/2010 ( <i>see</i> F2010L00797)	1/4/2010	
[CO 10/289]	29/4/2010 ( <i>see</i> F2010L01077)	Paras 1, 2, 3 & 6: 29/4/2010 Paras 4 & 5: 1/6/2010	-
[CO 10/464]	18/6/2010 ( <i>see</i> F2010L01687)	21/6/2010	-
[CO 10/1037]	6/1/2011 ( <i>see</i> F2011L00059)	17/1/2011	-

### Table of Amendments

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
Subpara 4(aaa).....	ad. [CO 10/1037]
Subpara 4(aa).....	ad. [CO 10/464]
Subpara 4(ab) .....	ad. [CO 10/464]
Subpara 4(ac).....	ad. [CO 10/1037]
Subpara 4(ca).....	ad. [CO 10/289]
Subpara 4(da) .....	ad. [CO 10/289]
Para 5.....	ad. [CO 10/289]