

**Australian Securities and Investments Commission
Corporations Act 2001 — Paragraphs 1020F(1)(a) and (c) — Variation**

Enabling legislation

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

Title

2. This instrument is ASIC Class Order [CO 10/289].

Commencement

3. The provisions of this instrument commence as follows:
 - (a) paragraphs 1, 2, 3 and 6 commence on the date the instrument is registered under the *Legislative Instruments Act 2003*;
 - (b) paragraphs 4 and 5 commence on the later of:
 - (i) the date the instrument is registered under the *Legislative Instruments Act 2003*; or
 - (ii) 1 June 2010.

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/>.

Variation

ASIC Class Order [CO 08/764]

4. ASIC Class Order [CO 08/764] is varied by, after paragraph 4, inserting:

“Conditions

Positional reporting

4A. Subject to paragraph 4D, a person relying on the exemption in paragraph 4 must give to ASIC in the form required by ASIC particulars of the person’s short position in relation to the security or managed investment product as at 7pm 3 reporting days before the day the particulars must be given under paragraph 4B.

4B. The person must give the particulars about the short position:

- (a) on or before 9 am on the third reporting day after the exercise of the ETO that causes the short position to occur; and
 - (b) on or before 9 am on each subsequent reporting day as long as the person has a short position.
- 4C. Subparagraph 4B(b) applies whether or not the particulars about the short position have changed from that given on the previous day.
- 4D. A person:
- (a) that is required by subsection 1020AB(3) of the Act to give particulars of the person's short position on a day in relation to a security or product that is in the same class as the security or product; or
 - (b) with a short position in relation to the security or product on a day that does not exceed the value limit and the volume limit on the day;
- does not have to comply with paragraph 4A in relation to that short position.

Interpretation

- 4E. In this instrument:
- (a) the *value limit* in relation to a person for a security or managed investment product that is able to be traded on a financial market is not exceeded on a day if:
 - $A \times B$
 - does not exceed \$100,000 where:
 - A = the person's short position in relation to the security or product as at 7pm on the day.
 - B = either:
 - (a) the last sale price for the security or product on the financial market on the day (or, if there is no such price on that day, the last sale price on the financial market); or
 - (b) the price determined and published by the operator of the market after the close of trading for the day as the value of the security or product on the day.

- (b) the **volume limit** in relation to a person for a security or managed investment product that is able to be traded on a financial market is not exceeded on a day if:

$$\frac{A}{B} \times 100$$

does not exceed 0.01 where:

A = the person's short position in relation to the security or product as at 7pm on the day.

B = the total quantity of securities or products in the same class of securities or products on the day.

- (c) **reporting day** has the meaning given by subregulation 7.9.99(1) of the *Corporations Regulations 2001*.

short position has the meaning given by subregulation 7.9.99(2) of the *Corporations Regulations 2001*."

ASIC Class Order [CO 09/774]

5. ASIC Class Order [CO 09/774] is varied as follows:

- (a) before paragraph 5 insert:

"Securities lending arrangement";

- (b) after subparagraph 5(b) insert:

"Positional reporting

5A. Subject to paragraph 5D, a person relying on the exemption in paragraph 4 must give to ASIC in the form required by ASIC particulars of the person's short position in relation to the shorted product as at 7pm 3 reporting days before the day the particulars must be given under paragraph 5B.

5B. The person must give the particulars about the short position:

- (a) on or before 9 am on the third reporting day after entering into the agreement to sell that causes the short position to occur; and
- (b) on or before 9 am on each subsequent reporting day as long as the person has a short position.

5C. Subparagraph 5B(b) applies whether or not the particulars about the short position have changed from that given on the previous day.

5D. A person:

- (a) that is required by subsection 1020AB(3) of the Act to give particulars of the person's short position on a day in relation to a security or product that is in the same class as the shorted product; or
- (b) with a short position in relation to the shorted product on a day that does not exceed the value limit and the volume limit on the day;

does not have to comply with paragraph 5A in relation to the short position.”;

(c) in paragraph 6:

- (i) after the definition of *makes a market* insert:

“*reporting day* has the meaning given by subregulation 7.9.99(1) of the *Corporations Regulations 2001*.”;

- (ii) after the definition of *securities lending arrangement* insert:

“*short position* has the meaning given by subregulation 7.9.99(2) of the *Corporations Regulations 2001*.”;

(d) after paragraph 6 insert:

“7. In paragraph 5D:

- (a) the *value limit* in relation to a person for a security or managed investment product that is able to be traded on a financial market is not exceeded on a day if:

A x B

does not exceed \$100,000 where:

A = the person's short position in relation to the security or product as at 7pm on the day.

B = either:

- (a) the last sale price for the security or product on the financial market on the day (or, if there is no such price on that day, the last sale price on the financial market); or

- (b) the price determined and published by the operator of the market after the close of trading for the day as the value of the security or product on the day.
- (b) the *volume limit* in relation to a person for a security or managed investment product that is able to be traded on a financial market is not exceeded on a day if:

$$\frac{A}{B} \times 100$$

does not exceed 0.01 where:

A = the person's short position in relation to the security or product as at 7pm on the day.

B = the total quantity of securities or products in the same class of securities or products on the day.”.

ASIC Class Order [CO 10/29]

6. ASIC Class Order [CO 10/29] is varied as follows:

(a) after subparagraph 4(c) insert:

“(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.”;

(b) after subparagraph 4(d) insert:

“(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)”;

(c) after paragraph 4 insert:

“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”.

Dated this 21st day of April 2010

Signed by Stephen Yen PSM
as a delegate of the Australian Securities and Investments Commission