

ASIC CLASS ORDER [CO 10/135]

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 10/135] under s1020F(1)(a) of the *Corporations Act 2001 (Act)*.

Subsection 1020F(1)(a) of the Act provides that ASIC may exempt a person from specified provisions of Part 7.9 of the Act.

1. Background

People sometimes sell (**short sell**) financial products that they do not own with a view to repurchasing them later at a lower price.

Section 1020B regulates the short selling of certain financial products (**section 1020B products**). That provision has the effect of prohibiting a person from selling (**naked short selling**) these financial products unless they have a “presently exercisable and unconditional right to vest” the product in the buyer.

Generally, the Act permits a person to execute a short sale (**covered short sale**) where the person relies on an existing securities lending arrangement to have a ‘presently exercisable and unconditional right to vest’ the products in the buyer at the time of sale.

If a seller makes a covered short sale of a section 1020B product on a licensed market, the seller may be required to report their short position to ASIC in accordance with Division 5B of Part 7.9 of the Act and Division 15 of Part 7.9 of the *Corporations Regulations 2001 (Regulations)*.

A short position is a position in a section 1020B product in a listed entity where the quantity of the product that a person has is less than the quantity of the product which the person has an obligation to deliver.

On 1 April 2010, the *Corporations Amendment Regulations 2009 (No. 8)* amended the Regulations to facilitate reporting of short positions. ASIC Class Order [CO 10/29] deferred the commencement of short position reporting from 1 April 2010 to 1 June 2010.

2. Purpose of the class order

The purpose of this class order is to exempt sellers from reporting 'small' short positions that fall below a reporting threshold.

3. Operation of the class order

The class order provides that a seller with a short position in relation to a security or managed investment product that does not exceed the value limit (\$100,000) and the volume limit (0.01% of the total quantity of the products in the class) as at 7pm on a day does not have to comply with:

- (a) section 1020AB of the Act insofar as the section requires the seller to give the particulars specified in paragraph 7.9.100(1)(d) of the Regulations; or
- (b) regulation 7.9.100A of the Regulations in relation to the short position.

4. Commencement

This class order commences on the later of:

- (a) the day the instrument is registered under the *Legislative Instruments Act 2003*; and
- (b) 1 June 2010.

5. Consultation

Given the minor and technical nature of the instrument, no general public consultation was conducted.