

ASIC CLASS ORDER [CO 11/269]

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 11/269] under s1020F(1)(a) of the *Corporations Act 2001* (the Act).

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

1. Background

Section 1020B regulates the short selling of certain financial products (section 1020B products). Section 1020B(2) states a person must not sell section 1020B products unless they believe on reasonable grounds that they have a presently exercisable and unconditional right to vest the products in the buyer.

Currently, by way of ASIC Class Order [09/774] *Naked Short Selling relief for market makers* ("CO 09/774"), a person does not have to comply with subsection 1020B(2) in relation to a sale of a security (or managed investment product) ("**shorted product**") by that person where, among other conditions, at the time of the sale, the shorted product is a constituent of the index known as the S&P/ASX 200¹.

2. Purpose of the class order

The purpose of CO 11/269 is to vary CO09/774 allowing market makers to naked short sell constituents of the S&P/ASX 300, rather than the S&P/ASX 200.

This amendment has been made on the grounds of:

- Liquidity – sufficient liquidity outside the S&P/ASX 200 and within the S&P/ASX 300 to ensure that settlement risk [is not an issue];
- Volatility – given the market is generally more stable than it was when the ASX 200 limit was put in place; and

3. Operation of the class order

¹ Note: This index is compiled and calculated by Standard and Poor's, a division of The McGraw-Hill Companies, Inc. Its constituents are subject to change from time to time. Details of the current constituents may be found via <http://www.standardandpoors.com.au/>.

This Class Order varies CO 09/774 by deleting the term 'S&P/ASX 200' at paragraph 4(e) and substituting it with 'S&P/ASX 300'.

4. Documents incorporated by reference

No documents are incorporated by reference.

5. Consultation

ASIC consulted informally with a number of market makers in relation to the amendment in this CO 11/269 and their feedback was supportive of the proposal to amend CO 09/774 to permit market makers to naked short sell constituents of the S&P/ASX 300.

Before making CO 09/774, ASIC consulted publicly, in Consultation Paper 106: *Short Selling to hedge risk from market making activities* (CP 106). Responses to CP 106 were published by ASIC in Report 167: *Response to submissions on CP106 Short Selling to hedge risk from market making activities*.