

ASIC Class Order [CO 09/39]

Variation of Class Order [CO 08/751]

Issued 25/5/2009

Registered 25/5/2009

Effective 25/5/2009

Related documents: [MR 09/94]

Class Order [CO 09/39] varies Class Order [CO 08/751] Covered short sales to lift the prohibition on covered short sales of securities, managed investment products and stapled securities on the S&P/ASX 200 Financial index or of certain other APRA regulated businesses quoted on a licensed market. Class Order [CO 09/39] also makes technical amendments to the regime for disclosure in Class Order [CO 08/751] as exemptions to permit covered short selling will not be needed once the ban is lifted.

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

Prepared by the Australian Securities and Investments Commission.

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

Enabling legislation

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

Title

2. This instrument is ASIC Class Order [CO 09/39].

Commencement

3. This instrument commences on the later of:
 - (a) the date it is registered under the *Legislative Instruments Act 2003*; and
 - (b) 09:55 am Australian Eastern Standard Time on 25 May 2009.

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

Lifting of covered short selling ban

4. Paragraph 4 of ASIC Class Order [CO 08/751] is varied by omitting notional section 1020BD of the Act.

Consequential variations

5. Notional section 1020BC of the Act as set out in paragraph 4 of ASIC Class Order [CO 08/751] is varied as follows:

- (a) in subsection (2), omit paragraphs (b) and (c) and the note under that subsection, substitute:

“(b) a covered short sale.

Note: In some cases a sale may not be of either of these kinds because, for example, it is covered by an instrument made under section 1020F.”;

- (b) in subsection (3):

- (i) omit subparagraphs (a)(ii) and (a)(iii), substitute:

“(ii) a covered short sale; and”;

- (ii) omit subparagraphs (b)(ii) and (b)(iii), substitute:

“(ii) a covered short sale.”;

- (c) in subsection (6):

- (i) omit the definition of *exempt covered short sale*, substitute:

“*covered short sale* means a sale of section 1020B products where at the time of the sale, the person making the sale has or, if the person is selling on behalf of another person, that other person 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.”;

- (ii) in the definition of *reportable short sale* omit paragraph (a), substitute:

“(a) a sale of section 1020B products to which subsections (2) and (3) apply (see subsection (1)) that is a covered short sale; or”;

- (iii) omit the definition of *short sale*.

Dated this 25th day of May 2009

Signed by Anthony D'Aloisio
as a delegate of the Australian Securities and Investments
Commission