

ASIC Class Order [CO 08/764]

Short selling – exercise of exchange traded options

*Issued 23/9/2008
Registered 23/9/2008*

Related document: [RG 196]

Class Order [CO 08/764] has the effect of exempting a person from having to comply with s1020B(2) in relation to the sale of a security or managed investment product where the transaction affecting the sale of the product is the result of the exercise of an ASX exchange traded option.

Without relief, s1020B(2) would otherwise require the seller to have, at the time of sale, a 'presently exercisable and unconditional right to vest' certain products in the buyer.

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

This compilation was prepared on 29 April 2010 taking into account amendments up to [CO 10/289]. See the table at the end of this class order.

Prepared by the Australian Securities and Investments Commission.

Australian Securities and Investments Commission Corporations Act 2001 — Paragraph 1020F(1)(a) — Exemption

Enabling legislation

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

Title

2. This instrument is ASIC Class Order [CO 08/764].

Commencement

3. The provisions of this instrument commence as follows:
 - (a) paragraphs 1 to 4 commence on the date the instrument is registered under the *Legislative Instruments Act 2003*;

- (b) paragraphs 5 to 7 commence on the day after the instrument is registered.

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/>.

Exemption

4. A person does not have to comply with subsection 1020B(2) of the Act in relation to the sale of a security or managed investment product where the transaction effecting the sale of the security or product is the result of the exercise of an option (*ETO*) registered with Australian Clearing House Pty Limited.

[*Historical note:* Paragraphs 5—9 (including all headings and subheadings) deleted 11/12/2009 [CO 09/1063]. Paragraphs 5—9 previously read:

“Conditions

Sellers of securities or managed investment products

5. A person (the *client*) who sells a security or product through a participant in a licensed market as the result of the exercise of an ETO must inform the participant whether the sale is a naked ETO short sale. The client must inform the participant:

- (a) where the client requests the participant to exercise the ETO—at the time the request is made; or
- (b) otherwise—as soon as practicable after the client becomes aware that the sale has been made.

Market participants

6. A participant in a licensed market who sells a security or product on behalf of a client as the result of the exercise of an ETO must ask the client whether the sale is a naked ETO short sale. The participant must ask:

- (a) where the client requests that the ETO be exercised—at the time the request is made; or
- (b) otherwise—as soon as practicable after the sale has been made.

7. A participant in a licensed market does not have to comply with paragraph 6 if, at the relevant time, the participant has been informed by the client whether the sale is a naked ETO short sale.

8. A participant in a licensed market must record in written or electronic form whether any sale of a security or product the participant makes as the result of the exercise of an ETO is a naked ETO short sale. The record must be made:

- (a) where the sale is made on behalf of a client—at the time the participant is informed whether the sale is of that kind; or
- (b) otherwise—at the time of the sale.

Interpretation

9. In this instrument:

naked ETO short sale means a sale of a security or managed investment product which would contravene subsection 1020B(2) of the Act but for paragraph 4.

request in relation to the exercise of an ETO does not include a request to exercise the ETO on its expiry date if the price of the security or managed investment product to which it relates is at a specified level at a specified time on that date.”.]

[*Historical note:* Paragraphs 5—9 previously replaced 19/11/2008 [CO 08/824]. Paragraphs 5—9 formerly read:

Brokers

5. A financial services licensee who makes a sale of a security or product on behalf of another person as the result of the exercise of an ETO must ask the other person whether the sale would breach subsection 1020B(2) of the Act but for paragraph 4. The licensee must record the answer in written or electronic form before selling the product.

6. A financial services licensee who is a participant on the market must by no later than 9.00am on each trading day inform the market operator of their net ETO securities short position in relation to each relevant security or product as at 7:00pm on the previous trading day.

Exercise of put option

7. A person who requests a financial services licensee to make a sale of a security or product by way of exercising an ETO must, when making the request, inform the licensee whether the sale would breach subsection 1020B(2) of the Act but for paragraph 4.

Assignment of call option

8. A person who is required to make a sale of a security or product as the result of the exercise of an ETO must, at the time of being so required, inform the financial services licensee who acted on the person's behalf in relation to the ETO whether the sale would breach subsection 1020B(2) of the Act but for paragraph 4.

Interpretation

9. In this instrument:

net ETO securities short position means, in relation to a financial product sold by a financial services licensee, the amount worked out according to the following formula:

borrowed products sold — borrowed products settled

where:

borrowed products sold means the total number of products in the class the sale of which is covered by paragraph 4 that have been sold by the licensee since the commencement of paragraph 6 this instrument; and

borrowed products settled means the total number of borrowed products sold in the class in respect of which products have been vested in the buyer since the commencement of paragraph 6 this instrument.'.]

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:

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

B

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*.

[*Historical note:* [CO 08/764] amended 1/6/2010 [CO 10/289] by inserting Paragraphs 4A—4E, the headings ‘Conditions; and ‘Interpretation’ and the subheading ‘Positional reporting’.]

Dated this 23rd day of September 2008

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

Notes to ASIC Class Order [CO 08/764]

Note 1

ASIC Class Order [CO 08/764] (in force under s1020F(1)(a) 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 making or FRLI registration	Date of commencement	Application, saving or transitional provisions
[CO 08/764]	23/9/2008	23/9/2008 – 24/9/2008	-
[CO 08/824]	18/11/2008	19/11/2008	-
[CO 09/1063]	10/12/2009	11/12/2009	-
[CO 10/289]	29/4/2010	1/6/2010	-

Table of Amendments

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

Provision affected	How affected
Paras 5—9	rs. [CO 08/824]; rep [CO 09/1063]
Paras 4A—4E	ad. [CO 10/289]