

# ASIC Class Order [CO 10/1037]

## Variation of Class Order [CO 10/29]

*Issued 24/12/2010*  
*Registered 6/1/2011*  
*Effective 17/1/2011*

*Class Order [CO 10/1037] varies Class Order [CO 10/29] Short position reporting regime postponement and clarification to clarify how a person should calculate their short position in a product in circumstances where the person, acting in more than one capacity, has products and has obligations to deliver products.*

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

Prepared by the Australian Securities and Investments Commission.

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### **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 10/1037].

#### **Commencement**

3. This instrument commences on the later of:
  - (a) 17 January 2011; and
  - (b) the day the instrument is registered under the *Legislative Instruments Act 2003*.

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**

4. ASIC Class Order [CO 10/29] is varied as follows:
  - (a) after subparagraph 4(a) insert:

“(aaa) omit subregulation 7.9.99(2), substitute:

“(2) In this Division, a *short position* is a position in relation to a section 1020B product in a listed entity where the quantity of the product which a person, acting in a particular capacity, has is less than the quantity of the product which the person, acting in the same capacity, has an obligation to deliver.

Note: A person may have more than one position in relation to the product on a particular day. For example, a person will have two positions in relation to the product if the person, acting in a particular capacity, has a position and the person, acting in a different capacity, also has a position.”;

(b) after subparagraph 4(ab) insert:

“(ac) after subregulation 7.9.99(4) insert:

“(4A) In subregulation (2), the person has the product or has an obligation to deliver the product only if the person is acting in one or more of the following capacities:

- (a) the person is acting on their own behalf; or
- (b) the person is acting on behalf of another person except where that other person has the sole discretion to decide whether the product will be sold; or
- (c) another person is acting on behalf of the person but only where the person has the sole discretion to decide whether the product will be sold.

(4B) For the purposes of subregulation (2):

- (a) subject to paragraph (b), the capacities referred to in each of the paragraphs in subregulation (4A) are taken to be separate capacities;
- (b) where a person is acting on their own behalf under paragraph (4A)(a) and another person is acting on the person’s behalf under paragraph (4A)(c), the person is taken to be acting in the same capacity; and
- (c) in paragraph (4A)(b), where a person is acting on behalf of a person under an arrangement and is acting on behalf of another person under a different arrangement, the person is taken to be acting in a different capacity for each arrangement.”;

Dated this 24<sup>th</sup> day of December 2010

Signed by Andrew Fawcett

as a delegate of the Australian Securities and Investments  
Commission