

# ASIC Class Order [CO 10/111]

## Short selling: limited relief for deferred purchase agreement issuers from s1020B(2)

*Issued 15/2/2010*

*Registered 18/2/2010*

*Effective 18/2/2010 (date of registration)*

*Related document: [RG 196]*

*Class Order [CO 10/111] exempts a person (issuer) from having to comply with s1020B(2) of the Corporations Act in relation to the sale of a security or managed investment product (delivery product) under a deferred purchase agreement (DPA) where the terms of the DPA provide that the issuer will deliver the delivery products at least 12 months after entering into the DPA and that the number and value of the delivery products to be delivered is determined by reference to nominated reference assets. Relief applies in the limited circumstances set out in the class order. It does not extend to the issuer's hedging activities in relation to their exposure to the reference asset under the DPA.*

This instrument has effect under s1020F(1)(a) 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)(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 10/111].

#### **Commencement**

3. This instrument commences on the date it 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*, section 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 a sale of a security (*delivery product*) or managed investment product (*delivery product*) that is able to be traded on the financial market operated by ASX where the transaction effecting the sale of the delivery product is the entering into of an agreement under which:
- (a) a person agrees to deliver, at least 12 months after entering into the agreement, delivery products at a specified time (*maturity*) in the future to another person; and
  - (b) the number and value of the delivery products to be delivered at maturity is ultimately determined or derived from the value or amount of one or more of the following:
    - (i) other financial products (other than a derivative that relates to the delivery products);
    - (ii) an asset;
    - (iii) a rate (including an interest rate or exchange rate);
    - (iv) an index;
    - (v) a commodity; and
  - (c) the person who agrees to deliver the delivery products at maturity has the right, in circumstances set out in the agreement, to instead deliver other securities or managed investment products where the securities or products are, at maturity, in a class of financial products that is a constituent of the index known as the S&P/ASX 200.

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/>.

## Interpretation

5. In this instrument:

*able to be traded* includes (in addition to the meaning given by section 761A of the Act), in relation to a financial product and a market, traded on the market under terms by which the product must be transferred together with one or more other financial products.

*ASX* means ASX Limited.

Dated this 15<sup>th</sup> day of February 2010

Signed by Stephen Yen PSM

as a delegate of the Australian Securities and Investments  
Commission