

ASIC CLASS ORDER [CO 08/753]

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 08/753] under s1020F(1)(c) of the *Corporations Act 2001* (the *Act*).

Section 1020F(1)(c) relevantly provides that ASIC may declare that Part 7.9 of the Act applies in relation to a person as if specified provisions were omitted, modified or varied.

1. Background

ASIC Class Order [CO 08/752] was issued on Sunday 21 September 2008 to prohibit certain covered short selling of securities on licensed markets subject to a limited exemption for certain market makers. This was done as a matter of urgency in response to turmoil on international financial markets, having regard to the actions taken by relevant overseas regulatory agencies in relation to short selling on their markets. The prohibition was aimed at all financial products commonly regarded as securities traded on licensed markets. This was evident from ASIC's announcements at the time.

The Class Order as made may not have its intended effect as the applicable statutory definitions do not or may not apply to the securities of managed investment schemes such as property trusts, or what are commonly known as stapled securities (typically this is a managed investment product traded together with one or more other managed investment products or shares).

2. Purpose of the class order

ASIC Class Order [CO 08/753] corrects the drafting anomaly described above.

3. Operation of the class order

The class order varies ASIC Class Order [CO 08/751] by amending notional s1020BD of the Act (added to that instrument by ASIC Class Order [CO 08/752] which also varies ASIC Class Order 08/751]). Section 1020BD prohibits the covered short selling of certain securities subject to a limited exemption for certain market makers. The variations involve:

- adding references to managed investment products where necessary in s1020BD(1) and (2); and

- expressly ensuring that stapled securities are covered by adding a new definition of *able to be traded* to s1020BD(3).

The instrument commences on the date it is registered. This is expected to be 22 September 2008.

4. Documents incorporated by reference

No documents are incorporated by reference.

5. Consultation

No consultation was undertaken as the instrument is of a minor or technical nature and required as a matter of urgency.