

ASIC Class Order [CO 08/752]

Variation of Class Order [CO 08/751]

Issued 21/9/2008

Registered on Federal Register of Legislative Instruments 22/9/2008

Effective 22/9/2008 (date of registration)

Related documents: [MR 08/204], [MR 08/205], [RG 196], [AD 08/20]

Class Order [CO 08/752] varies Class Order [CO 08/751] Disclosure of covered short sales by prohibiting the sale of securities quoted on a licensed market where the person has a 'presently exercisable and unconditional right to vest' the securities in the buyer because of a securities lending arrangement entered into before that time.

Class Order [CO 08/751] is also amended so that the financial services licensee must, after making positive enquiry whether the sale is a sale captured under s1020BC, record the answer in written or electronic form before selling the products.

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 08/752].

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*, s 4 (definition of *register*). The FRLI may be accessed at <http://www.frli.gov.au/>.

Declaration

4. Paragraph 4 of ASIC Class Order [CO 08/751] is varied by:

- (a) in notional section 1020BC, adding at the end of subsection (3) “The licensee must record the answer in written or electronic form before selling the products.”; and
- (b) adding after notional section 1020BC:

“1020BD Prohibition of covered short selling of certain securities

- (1) Notwithstanding sections 1020B and 1020BC, a person must not sell a security that is in a class of securities that is able to be traded on a licensed market if at the time of the sale:
 - (a) the person has or, if the person is selling on behalf of another person, that other person has; or
 - (b) the person believes on reasonable grounds that the person 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 security in the buyer because of a securities lending arrangement entered into before that time.
- (2) Subsection (1) does not apply in relation to a sale of a security by a person who is a Market Maker or Warrant Market Maker for the purposes of managing, avoiding or limiting the financial consequences of issuing or holding a derivative in the course of the person’s market making activities.

Note: Subsection (2) enables a market maker to make covered short sales to hedge derivative positions that have entered into in the course of their market activities to the extent that they are contemplated by the ASX Market Rules.

- (3) In this section:

Market Maker has the same meaning as in the ASX Market Rules as at 19 September 2008.

market making activities means the acquisition or disposal of derivatives by a person acting in the capacity of a Market Maker or Warrant Market Maker in the circumstances and manner covered by sections 10 or 23 of the ASX Market Rules as at 19 September 2008.

securities lending arrangement has the same meaning as in section 1020BC.

sell has a meaning affected by subsection 1020B(7).

Warrant Market Maker has the same meaning as in the ASX Market Rules as at 19 September 2008.”.

Dated this 21st day of September 2008

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