

ASIC Class Order [CO 09/1051]

Short selling relief: Exchange traded options, unobtained financial products and certain bonds and debentures

Issued 5/1/2009

Registered 8/1/2009

Effective: Paragraphs 1-3 – 8/1/2009; Paragraphs 4-7 – when regulations 7.9.79 and 7.9.80A of the Corporations Regulations are omitted

Related document: ASIC Advisory (AD 09/2) Continuation of exemptions in relation to naked short selling

Class Order [CO 09/1051] provides an exemption from the requirement to comply with s1020B(2) of the Corporations Act 2001 in certain circumstances.

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

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 09/01051].

Commencement

3. The provisions of this instrument commence as follows:
 - (a) paragraphs 1 to 3 commence on the day the instrument is registered under the *Legislative Instruments Act 2003*;
 - (b) paragraphs 4 to 7 commence on the day regulations 7.9.79 and 7.9.80A of the *Corporations Regulations 2001* are omitted.

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/>.

Exemptions

4. A person does not have to comply with subsection 1020B(2) of the Act in relation to:
 - (a) a sale of financial products that is done by the giving or writing of an exchange traded option; and
 - (b) a sale of unobtained financial products if:
 - (i) the person; or
 - (ii) where the person is selling as an agent—the principal, is, at the time of the sale, able to obtain at least the number of financial products of the same class as the unobtained financial products by exercising exchange traded options.

5. A person does not have to comply with subsection 1020B(2) of the Act in relation to a sale of eligible debentures where the person:
 - (a) sells the debentures as principal; and
 - (b) is entitled to use the clearing and settlement facilities of:
 - (i) Austraclear Limited ACN 002 060 773 or any other CS facility licensee; or
 - (ii) RITS; and
 - (c) believes on reasonable grounds that arrangements can be put in place before the time for delivery of the debentures that will enable the debentures to be unconditionally vested in the purchaser by the time for delivery.

Interpretation

6. For the purposes of subparagraph 4(b):
 - (a) the number of shares of a class that a person is able to obtain at the time of a sale is:

$$FPIO - FPSO - PS$$

where:

FPIO (Financial Products Immediately Obtainable) means the number of financial products of the class that, at the time of the sale, the person is able to obtain by exercising exchange traded options at a price:

- (a) that does not exceed the sale price payable to the person under the sale; or
- (b) that exceeds the sale price by an amount that is no more than an amount deposited by the person with:
 - (i) Australian Clearing House Pty Limited; or
 - (ii) SFE Clearing Corporation Pty Limited;
 before and in relation to the sale.

FPSO (Financial Products Subject to Options) means the number of financial products of the class sold over which the person has given or written exchange traded options that, at the time of sale, have not expired or been exercised.

PS (unobtained financial products Previously Sold) means the number of unobtained financial products previously sold in sales that have not been completed at the time of the sale.

- (b) the price payable by the person for obtaining financial products by exercising exchange traded options is to be calculated by reference first to the option with the lowest exercise price, then to the option with the second lowest exercise price, and so on in ascending order of price until the necessary number of options would have been exercised.

7. In this instrument:

CS facility licensee has the meaning given by section 761A.

eligible debentures means:

- (a) bonds issued by a government; or
- (b) debentures or bonds of a body corporate if the amount of debentures or bonds on issue with the same maturity and coupon terms exceeds \$100,000,000 in value.

exchange traded option means an option registered with:

- (a) Australian Clearing House Pty Limited; or
- (b) SFE Clearing Corporation Pty Limited.

unobtained financial products means financial products of a class:

- (a) that a person has agreed to sell; and
- (b) over which:

- (i) the person; or
- (ii) where the person is selling as an agent—the principal,
does not, at the time of the sale, have a presently exercisable
and unconditional right to vest in the buyer.

Dated this 5th day of January 2009

Signed by Camille Blackburn
as a delegate of the Australian Securities and Investments
Commission