

# ASIC Class Order [CO 08/764]

## Short selling – exercise of exchange traded options

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

This compilation was prepared on 19 November 2008 taking into account amendments up to [CO 08/824]. See the table at the end of this class order.

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 08/764].

#### Commencement

3. The provisions of this instrument commence as follows:
  - (a) paragraphs 1 to 4 commence on the date the instrument is registered under the *Legislative Instruments Act 2003*;
  - (b) paragraphs 5 to 7 commence on the day after the instrument is registered.

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/>.

#### Exemption

4. A person does not have to comply with subsection 1020B(2) of the Act in relation to the sale of a security or managed investment product where the transaction effecting the sale of the security or product is the result of the exercise of an option (*ETO*) registered with Australian Clearing House Pty Limited.

## Conditions

### *Sellers of securities or managed investment products*

5. A person (the **client**) who sells a security or product through a participant in a licensed market as the result of the exercise of an ETO must inform the participant whether the sale is a naked ETO short sale. The client must inform the participant:
  - (a) where the client requests the participant to exercise the ETO—at the time the request is made; or
  - (b) otherwise—as soon as practicable after the client becomes aware that the sale has been made.

### *Market participants*

6. A participant in a licensed market who sells a security or product on behalf of a client as the result of the exercise of an ETO must ask the client whether the sale is a naked ETO short sale. The participant must ask:
  - (a) where the client requests that the ETO be exercised—at the time the request is made; or
  - (b) otherwise—as soon as practicable after the sale has been made.
7. A participant in a licensed market does not have to comply with paragraph 6 if, at the relevant time, the participant has been informed by the client whether the sale is a naked ETO short sale.
8. A participant in a licensed market must record in written or electronic form whether any sale of a security or product the participant makes as the result of the exercise of an ETO is a naked ETO short sale. The record must be made:
  - (a) where the sale is made on behalf of a client—at the time the participant is informed whether the sale is of that kind; or
  - (b) otherwise—at the time of the sale.

## Interpretation

9. In this instrument:

***naked ETO short sale*** means a sale of a security or managed investment product which would contravene subsection 1020B(2) of the Act but for paragraph 4.

**request** in relation to the exercise of an ETO does not include a request to exercise the ETO on its expiry date if the price of the

security or managed investment product to which it relates is at a specified level at a specified time on that date.

## Notes to ASIC Class Order [CO 08/764]

### Note 1

ASIC Class Order [CO 08/764] (in force under s1020F(1)(a) of the *Corporations Act 2001*) as shown in this compilation comprises that Class Order amended as indicated in the tables below.

### Table of Instruments

Instrument number	Date of FRLI registration	Date of commencement	Application, saving or transitional provisions
[CO 08/764]	23/9/2008 ( <i>see</i> F2008L03534)	Paras 1–4: 23/9/2008 Paras 5–7: 24/9/2008	
[CO 08/824]	18/11/2008 ( <i>see</i> F2008L04330)	19/11/2008	-

### Table of Amendments

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
Paras 5–9 .....	rs. [CO 08/824]