



INFORMATION RELEASE



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ASIC REMINDS MARKET PARTICIPANTS ABOUT STOCK LENDING DISCLOSURE OBLIGATIONS

The Australian Securities and Investments Commission (ASIC) has noted market commentary in relation to the practices of stock lending and short selling being associated with current market volatility.

ASIC considers it is timely to remind market participants of some important disclosure obligations. ASIC is of the view that persons engaged in stock lending or stock borrowing should carefully examine their obligations to lodge substantial holding notices in a timely manner.

It is very likely the acquisition of a substantial holding of securities as part of a stock lending arrangement will give rise to a duty to disclose the substantial holding to the listed company (or registered scheme) and the market operator. This is because the borrower of the securities will acquire a “relevant interest” in the securities at the time it agrees to borrow it. When the securities are sold, there will be a corresponding notifiable disposal.

A person is obliged to lodge a substantial holding notice:

- within two business days of becoming aware of their substantial holding; or
- if a takeover is on foot, by 9.30 am on the next trading day of the financial market after becoming aware of their substantial holding.

Stock lending and the takeovers and substantial holding provisions of the *Corporations Act 2001*

Stock lending describes the practice by which securities are transferred from one party (the “lender”) to another (the “borrower”), with the borrower obliged to return them (or equivalent securities) either on demand or at the end of any agreed term. Stock borrowing is often undertaken to “cover” what would otherwise be regulated short selling transactions under the Corporations Act and ASX Market Rules.

Stock lending activity requires consideration of the relevant interest and substantial holding provisions of the Corporations Act. Under section 608 of the Corporations Act, a person has a relevant interest in securities if (among other things) they:

- a) hold the securities; or
- b) can vote (or control the voting) of a security; or
- c) can dispose (or control the disposal) of a security.

Section 608 provides it “does not matter how remote the relevant interest is or how it arises” (section 608(1)), or that the power or control is “indirect”, is “subject to restraint”, or even “cannot be related to particular security” (section 608(2)). Further, section 608(8) accelerates the acquisition of interests for the purposes of section 606 by anticipating the performance of agreements.

The holdings of a party's "associates" (defined in Part 2 Division 1.2 of the Corporations Act) are also taken into account in determining relevant interests.

Under section 671B of the Corporations Act, an obligation to make initial substantial holding notice disclosure will arise if a person has a relevant interest in more than 5% of a listed company or registered scheme. The person is also obliged to notify of a movement of 1% in that holding.

It is ASIC's view that entry into a stock lending agreement and/or the allocation of securities by the lender to the borrower engages the relevant interest provisions of the Corporations Act. That must be the case where a borrower holds a presently exercisable and unconditional right to vest borrowed securities. Accordingly, stock lending may give rise to substantial holding notice implications for the lenders, the parties who manage stock lending arrangements, and borrowers.

Stock borrowed will also be subject to the 20% control threshold in section 606 of the Corporations Act. Section 606 of the Corporations Act prohibits persons from acquiring relevant interests in the voting shares of a public/listed company if that person or someone else's voting power increases from a figure at or below 20% to a figure above 20% (or from a figure above 20% to a higher figure above 20% but below 90%) unless acquired in one of the circumstances set out at section 611.

ASIC expects strict compliance with the substantial holding and control threshold obligations by all holders, and will be monitoring trading and related disclosures to ensure this occurs.

ASIC is aware that some market participants may find strict observance of these obligations administratively burdensome, but ASIC believes this disclosure is important particularly in current market conditions. Our Regulatory Guide 159.267 describes some circumstances where parties to stock lending arrangements may lodge joint holding notices and ASIC proposes to issue a consultation paper to consider means of streamlining notification procedures.

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