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## **COVERED SHORT SELLING NOT PERMITTED**

The Australian Securities and Investments Commission (ASIC), along with other global regulators, is concerned that the recent market global conditions, coupled with extensive short selling of stocks, particularly financial stocks, may be causing unwarranted price fluctuations. These fluctuations if unchecked, threaten the operation of fair and orderly stock markets.

On Friday, ASIC responded to these concerns by announcing three measures, in consultation with the Australian Securities Exchange (ASX), to apply from the opening of the market on Monday, 22 September 2008 to the implementation of the Government's short selling legislation (the End Date):

1. to ban or not permit naked short selling
2. to clarify and, in doing so, narrow the permitted class of covered short sales
3. to introduce a reporting regime for permitted covered short sales.

Since that announcement, ASIC has continued to assess moves by other international regulators. The US and the UK moved late last week to ban covered short sales in financial stocks. Countries which have now followed are France, Germany, Switzerland, Ireland and Canada (Ontario), and other regulators are assessing their responses. These developments which, in effect, restrict short selling activity in these markets, intensify the risks on the Australian market. Put simply, because global funds can move quickly, the risk of unwarranted activity on the Australian market has intensified. This intensity has been assessed by ASIC in the context of the small size, relative to other markets, of the Australian market and the structure of our market.

ASIC has therefore made the following decisions to apply from the opening of the market on Monday, 22 September 2008 until the End Date:

1. Contrary to ASIC's announcement on Friday, covered short sales for all listed stocks will now not be permitted (subject to a limited authorised market-maker exception)
2. ASIC will reassess and advise the market in 30 days, whether or not it will at that time, or at a later date, reopen covered short sales for non-financial stocks.

### **Summary of ASIC's new position on short selling until the End Date**

- naked short selling banned
- covered short selling banned (subject to limited authorised market-maker exemption)
- ASIC will reassess and advise the market in 30 days, whether or not it will at that time, or at a later date, reopen covered short sales for non-financial stocks.

In announcing ASIC's decision, Mr Tony D'Aloisio said 'These measures are necessary to maintain fair and orderly markets in these exceptional times of global crises of confidence in financial markets. Because of the relatively small size and the structure of the Australian market, it is necessary to extend the prohibition to all stocks. To limit the prohibition to financial stocks, as has been done in the UK, could subject our other stocks to unwarranted attack given the unknown amount of global money which may be looking for short sell plays'.

ASIC emphasised that it sees a legitimate place for short selling in markets (eg to assist with price discovery). Mr D'Aloisio went onto say: 'However, in the current climate and, in light of the actions taken by other regulators, we need a circuit breaker to assist in maintaining and restoring confidence. Our measures do that as they will operate for a limited time and in the case of non-financial stocks, will be reviewed in 30 days. In the case of financial stocks, the review will be in line with the time limits imposed by other international regulators such as the US and UK'.

ASIC will work with industry on transitional issues affecting bona fide market transactions.

ASIC has given effect to these changes by an instrument of modification to the Corporations Act.

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