

Short selling reporting obligations in Australia

MAY 2010

RECENT CHANGES TO THE AUSTRALIAN CORPORATIONS ACT AND REGULATIONS IMPOSE BOTH TRANSACTIONAL AND SHORT POSITION REPORTING ON INSTITUTIONS AND FUNDS, EVEN IF THEY ARE OUTSIDE AUSTRALIA.

If you have a “short position” in a security¹, you are required to report the position to ASIC and then update the position report daily. This is mainly relevant to trading in ASX quoted securities. The changes come into effect on 1 June 2010 and apply whether you are in Australia or overseas. Failure to comply is an offence under the Corporations Act.

NAKED SHORT SELLING PROHIBITED	Naked short selling is prohibited (with limited exceptions).
TRANSACTIONAL REPORTING OF COVERED SALES	Sales of securities covered by a securities borrowing must be reported to your executing broker. You must tell your broker that the sale is a covered sale. You should discuss this with your broker.
SHORT POSITION REPORTING	If you execute a covered sale of securities (or certain permitted naked short sales) <i>and</i> hold a short position in a security as at 7pm (Sydney time) on a reporting day, you must report the short position directly to ASIC. The short position must be reported to ASIC by 9am (Sydney time) on the day which is 3 reporting days after the date of the short position. A continuing short position must be reported daily thereafter. A reporting day is a day on which ASIC is open for business in Sydney.
THRESHOLD FOR POSITION REPORTING	You do not need to file a short position report if your short position in a security as at 7pm (Sydney time) on a reporting day meets <i>both</i> the following tests: <ul style="list-style-type: none">• Test 1 – the value of the short position is less than A\$100,000 (calculated by reference to the last sale price or valuation price published by ASX)• Test 2 – the short position is less than 0.01% of the number of the securities on issue.

1. Although we use the term “securities”, the short selling reporting obligations apply to short sales in “section 1020B” products, which include securities, managed investment products, debentures, stocks and bonds issued by the Australian government and derivatives.

FORM OF SHORT POSITION REPORT

Short position reports must be sent electronically using the FIX protocol and adopting the format and information requirements specified by ASIC at <http://www.asic.gov.au/asic/asic.nsf/byheadline/Reporting-short-position?openDocument>.

You must file the report using a unique identifier (such as an ACN, ARBN or a Swift BIC). If you don't have one of these identifiers, you must register with ASIC to get a unique identifier issued by ASIC.

CALCULATING YOUR SHORT POSITION

Your short position is calculated using the following formula:

the quantity of the security you have an obligation to deliver less the quantity of the security you have.

The quantity you *have* includes:

- the securities you hold yourself or which another person holds on your behalf (such as a custodian)
- securities you have purchased but the transaction has not yet settled
- securities which you have lent under a securities lending arrangement

The quantity you *have an obligation to deliver* includes:

- securities you have sold but the transaction has not yet settled
- securities you have borrowed where the lender has a right to recall the securities (whether exercised or not)
- any other non-contingent legal obligation to deliver.

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