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NAKED SHORT SELLING NOT PERMITTED AND COVERED SHORT SELLING TO BE DISCLOSED

The Australian Securities and Investments Commission (ASIC) today announced a package of interim measures relating to short selling.

The past week has seen unprecedented turmoil in the financial markets. The US Securities and Exchange Commission and UK Financial Services Authority have responded in recent days by announcing new rules to regulate short selling.

ASIC Chairman Tony D'Aloisio said:

'The decision has been taken to implement these interim measures to maintain confidence in our markets in the face of current international turmoil and to complement moves made by other regulatory agencies. We will keep the operation of these interim measures under review.'

This package achieves 3 things:

- first, from the opening of the market on Monday 22 September 2008, naked short sales on ASX's approved list in the cash equity market will not be permitted. ASIC supports ASX's announcement in this regard, which was also made today;
- secondly, ASIC has issued clarification of what are the covered short sales which will continue to be permitted;
- thirdly, for covered short sales which continue to be permitted, ASIC has introduced reporting requirements through the ASX.

These measures are to operate from opening of trading on Monday 22 September 2008 until the implementation of the Government's foreshadowed amendments in relation to short selling.

Naked Short Sales - ASX Approved Product List

ASX has decided (and ASIC agrees) that from Monday 22 September 2008, all securities will be removed from the ASX Approved Product List for naked short sales, until such time as the Government's foreshadowed legislation amendment in relation to short selling activity takes effect.

The practical effect of this action is to require most short sales to be covered.

What is a naked short sale

ASIC today released a Regulatory Guide on Short Selling that clarifies what constitutes a naked short sale.

The guide identifies that a naked short sale occurs unless the seller has ‘a presently exercisable and unconditional right to vest’. ASIC has also clarified through the guide that this means a legally binding commitment is required from another party such as a stock lender before the sale is entered into. ASIC will not accept an informal promise to locate stock before settlement day as sufficient for this purpose. Day traders, for example, will need stock to sell, before any sale.

To view the Regulatory Guide, please click [here](#).

What is Covered Short Selling

ASIC has clarified the meaning of covered short sales. That is the seller must have a ‘presently exercisable and unconditional right to vest’. Put simply, for example, a short seller must have a binding stock lending agreement for specific stock in place.

What disclosure is required for covered short selling?

ASIC has exercised its power under s1020F of the Corporations Act to require disclosure of covered short selling effected by reliance on stock lending agreements for specific stocks. This means a customer will be obliged to inform the broker that a transaction is a covered short sale of this type and the broker then must inform the ASX. The broker must ask the client if it is a covered short sale before taking the order.

ASX advises that it will report each morning on short sales that are reported to it for the previous day, consistent with its present reporting of naked short sales.

To view the instrument, please click [here](#).

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