



ASIC Announcement - Ban on Short Selling

Press Release 24th September 2008

The Australian Securities Lending Association (ASLA) response to the Australian Securities & Investment Commission (ASIC) Ban on Short Selling.

The market turmoil of recent weeks has presented unprecedented challenges for market participants and regulators. In response to this the regulators in the United States, United Kingdom, France and Australia as well as several other countries have introduced interim bans on short-selling.

ASLA understands the difficulty facing any regulator in these times and focusing specifically on the Australian market we appreciate the factors that ASIC considered before introducing an interim ban on short selling – it is imperative that Australia both protect our local market and maintain market practice in line with developed countries around the world.

This said there are several areas for clarification needed in regards to the wording of the ban. The most critical of these for our members is, we believe, the unintentional inclusion of shares held by long term investors whose custodial arrangements include participation in a Securities Lending Programme. This may result in securities being on loan at the point of sale being interpreted as a short sale.

Our understanding, which has been clarified by the regulators in the United States and the United Kingdom, is that the ban is not intended to be applicable to these sales which are made by long term investors in good faith of settlement at the time of execution. We welcome the Question & Answer document published by the Financial Services Authority¹ in the United Kingdom last night which clearly noted:

16. Is stock lending caught by the prohibition?

No, the FSA is not imposing any additional restrictions on stock lending activities. However, we would urge firms that do lend stock to be vigilant and, where they suspect that stock is being borrowed for the purpose of prohibited short selling, to alert the FSA.

NB, in making this call for vigilance, the FSA is not seeking to extend the current suspicious transaction reporting regime or firms' general obligations under principle 11.

Stock lenders should also note that a sale of lent stock would not create a short position for the stock lender but would for the borrower.

ASLA and several industry bodies have been in consultation with ASIC since this ban was announced to urgently seek similar confirmation of intent and clarification for market participants in regards to Australian equities.

Until this is announced ASLA urges that, as the market has done in regards to other activities for which clarification has been sought, lenders exercise caution and maintain their existing securities lending programmes until ASIC clarify the impact to securities lending transactions. Any recall of securities, withdrawal of available assets or liquidation of cash collateral will have significant impact to liquidity levels in the market and may be contrary to the intended effect of ASIC in their introduction of the short-sale ban.

We will continue to work with all market regulators and participants to assist in their efforts to increase transparency of activity and stabilisation of the current markets.

Natalie Floate
Chair
Australian Securities Lending Association

¹ FSA Short Selling FAQ Version 2.0 23 September 2008. This document is not intended to constitute FSA Guidance