



ASIC

Australian Securities & Investments Commission



ASX

AUSTRALIAN SECURITIES EXCHANGE

## MEDIA RELEASE

6 March 2008

### Market Warned about Stock Lending and Short Selling Obligations

The Australian Securities and Investments Commission (ASIC) and the Australian Securities Exchange (ASX) have today issued three statements to clarify and reinforce existing obligations in relation to share lending and short selling.

These statements follow the joint statement issued by the organisations last Friday on finance arrangements and margin loans involving listed companies.

The three statements include:

- **ASIC REMINDS MARKET PARTICIPANTS ABOUT STOCK LENDING DISCLOSURE OBLIGATIONS**

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

- **ASX ON SHORT SELLING**

ASX is addressing transparency and settlement risk issues associated with short selling within the context of its rules.

- **ASIC ON FALSE AND MISLEADING RUMOURS**

ASIC is concerned that some individuals may be spreading false and misleading information about listed securities to artificially provoke sales of securities and reduce their market prices.

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### **Short Selling**

The Australian Securities Exchange (ASX) is addressing transparency and settlement risk issues associated with short selling of listed securities in several ways. These issues are more acute in times of market volatility. In the current environment, ASX takes this opportunity to remind market Participants of the requirements existing under a combination of current legislative provisions and ASX market rules.

Short selling plays a useful role in contributing to market efficiency in a developed financial economy. Any obligations placed on brokers need to contribute to that efficiency or otherwise address clearly identifiable regulatory objectives.

Transparency of the amount of what is commonly referred to in the market as “naked” and “covered” short selling activity is important for market users to inform their trading decisions. A “naked short sale” for this purpose is where the Participant, either proprietary or on behalf of a client, enters an order in the market and does not have in place arrangements for delivery of the securities. A “covered short sale” for this purpose is where the Participant, either proprietary or on behalf of a client, enters an order in the market and does have in place arrangements for delivery of the securities, typically, by borrowing the relevant securities.

ASX achieves transparency by imposing obligations on brokers to ensure reporting to them by their clients of “naked” and “covered” short selling, and the on-forwarding of that information to ASX for dissemination to the market. To the extent that legislative amendments are needed to remove the scope for differing interpretations of key obligations under the law, and to support the obligations that ASX imposes directly on brokers and indirectly via brokers on other market users, appropriate representations have been made by ASX to Government. ASX will consult with industry on any consequential changes to its operating rules.

For the purposes of transparency of “naked” and “covered” short selling, a combination of legislative provisions and ASX rules require that:

- When asking a broker to execute a short sale, a client must inform the broker that the sale is a short sale.
- A broker must advise their client of the obligation to notify the broker of short sales.
- A broker must inform its clearer that the sale is a short sale, and must ensure that the clearer has secured a minimum 20% initial margin over the short position.
- A broker must advise ASX as soon as practicable that it is executing a short sale.
- A broker must report to ASX their unsettled net short sale position as at 7:00pm by no later than 9:00am on the next trading day.

Where a broker has reason to believe that a client is placing an order for a “naked” or “covered” short sale, ASX expects that the broker will make appropriate enquiries of the client to ascertain the nature of that sale in order to satisfy the broker’s obligations to provide its daily net short sale position to ASX.

Because short selling activity has the potential to give rise to settlement risks, ASX limits the class of listed securities in which “naked” short selling can occur (an “approved list” comprising approximately 20% of the stocks listed on ASX, based on liquidity and capitalisation criteria).

ASX consolidates the net short sale data provided by brokers and publishes the information in the form of a daily short sale list. The list provides details of aggregate net short sale positions (including “covered” short sales) in respect of approved short sale securities. The approved short sale list is available at: <http://www.asx.com.au/data/shortsell.txt>

ASX recognises the importance of proactively addressing settlement risks arising from “naked” short selling. ASX is reviewing the scale of its late fees for delayed settlement (against a background of comparatively few delayed settlements as a proportion of total market activity relative to other markets). ASX is also reviewing the removal of particular stocks from the approved short sale list if settlement failures increase for any security on the list.

Failure by brokers to comply with ASX rules could result in disciplinary action before the ASX Disciplinary Tribunal.

If ASX identifies a person not in compliance with their short selling obligations under the Act (in particular section 1020B(5)), ASX will refer the matter to ASIC.

If, in the course of any ASX monitoring of trading practices by brokers and/or their clients, ASX identifies the making or spreading of false or misleading statements (especially if in conjunction with short selling), ASX will refer the matter to ASIC for further investigation.

ASX will work with relevant market Participants to ensure their understanding is consistent with the requirements and intentions of the market rules.

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