

Short selling reporting obligations in Australia

Changes in recent years 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 security,¹ you are required to report the position to the Australian Securities and Investments Commission (ASIC) and then update the position report daily. This is mainly relevant to trading in ASX quoted securities. The changes came 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).

The prohibition applies to a short sale of relevant securities that is effected in Australia, regardless of where the seller is located or the issuer of the relevant securities is located. Accordingly the prohibition applies to any short sale effected through ASX or Chi-X Australia (or another Australian licensed market), even if the selling client is located outside Australia, or if the securities were issued by a foreign issuer.

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 whether or not any part of the sale is a covered sale. This reporting obligation applies where securities are sold (including by way of a crossing) on ASX or Chi-X Australia (or another Australian licensed market), regardless of where the selling client is located. A broker must not execute a sale order until the client has reported to the client whether or not any part of the sale is a covered sale. You should discuss this with your broker.

Brokers are required to report to the relevant market operator (such as ASX or Chi-X Australia) by electronic transmission by 9am (Sydney time) the following trading day the total number of each class of quoted securities sold by the broker for clients or as principal by way of covered sales. The market operator must then publicly disclose this information (in aggregate form) on its website or in another form easily accessible by the public.

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.

Short position reporting	<p>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.</p> <p>Subject to the thresholds mentioned below, this net position reporting obligation applies to any seller who makes a covered short sale through ASX or Chi-X Australia (or another Australian licensed market), regardless of where the seller is located or where the issuer of the relevant securities is located.</p>
Threshold for position reporting	<p>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:</p> <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.
Form of short position report	<p>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/Short-selling-reporting?openDocument.</p> <p>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.</p>
Calculating your short position	<p>Your short position is calculated using the following formula:</p> <div style="background-color: #444; color: white; padding: 5px; text-align: center; margin: 5px 0;"> $\frac{\text{the quantity of the security you have an obligation to deliver}}{\text{less the quantity of the security you have}}$ </div> <p>The quantity you <i>have</i> includes:</p> <ul style="list-style-type: none"> • 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. <p>The quantity you <i>have an obligation to deliver</i> includes:</p> <ul style="list-style-type: none"> • 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. <p>Short sellers are not permitted to net-off long and short positions where those positions are held in different capacities (for example as the manager of different funds).</p>



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