

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.