



25 September 2008

AD08-23

NO ACTION POSITION FOR OWNERS SELLING FROM STOCK LENDING PORTFOLIOS

The Australian Securities and Investments Commission (ASIC) has been consulting with the financial industry regarding the recall of securities that owners have placed in stock lending portfolios at the present time, and the potential impact of ASIC's class orders of 19 and 21 September 2008. ASIC has decided to issue this 'no action' position, which is in line with the approach taken by the FSA in the UK.

ASIC advises that it has adopted the following position in relation to persons who have placed portfolio securities into a securities lending program provided by an established securities lending business and who wish to sell those securities (a *sale*) before they have completed a recall of those securities from the program. It will ensure that an owner of securities can sell its securities from the program in the usual way.

ASIC will not take any action for a breach of short selling requirements in relation to the sale of those securities where all of the following apply:

The sale is a bona fide sale transaction from the portfolio.

The seller has made securities of the same type available (whether or not through a custodian) to the securities lender for use in a securities lending program, being securities in which the seller had full beneficial ownership or held as an institutional investor such as in a managed investment scheme, superannuation fund, insurance company statutory fund.

At the time of the sale, the seller is entitled to recall at least the number of securities, which are the subject of the sale from the securities in the securities lending program. Before or as soon as practicable after the sale, the seller recalls in written or electronic form, a sufficient number of securities from the securities lending program to settle the sale.

The sale is settled at the time required by the market rules (eg T + 3).

For the purposes of this no-action statement, a security includes a managed investment product.

This no action statement is subject to the terms set out in [ASIC Regulatory Guide 108 No Action Letters](#).

ASIC will monitor the market to ensure there is no misuse of this no action position. ASIC will monitor the providers of the securities lending programs to ensure that shares are not loaned out so as to facilitate objectionable short selling.

This advisory was posted late last night, Wednesday 24 September 2008, so it was in place for opening of the markets in the UK. It impacts the Australian markets from the opening of trade on 25 September 2008.

**For further information contact:
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