

## **Short Selling – Recent Development**

As a result of recent allegations of market malpractice, ASIC & ASX are considering legislative changes to keep the market better informed. This will include short selling and disclosure of stock lending. Recent market upheavals have involved a number of companies including: ABC Learning Centre, Allco Finance, Centro Properties, Tricom & MFS.

The US SEC intends to crack down on short selling where no arrangements are in place to deliver share script.

ASIC issued a statement on 29 February 2008 requiring directors to advise their company, of “all relevant information” if they have entered into margin loans over securities in the company. Companies need to decide if those loans could materially affect the share price and should be disclosed.

A gap in the law has allowed brokers to borrow stock in arrangements which are technically short selling.

Five market manipulation and six insider cases have been referred in 2008.

Only twelve insider convictions or penalties have occurred since 2001.

ASIC is investigating whether large funds have indulged in market manipulation by colluding to force down the price of shares by selling short where major shareholders are known to have margin loans.

Under existing rules only naked short selling – selling security and then buying it back, must be reported to ASX.

The need to disclose may be pursuant to ASX listing rule 3.1.

The new ASX guidance may require companies to issue a questionnaire to directors and ask if their holdings are substantial. This may be required for corporate governance purposes as well. A question of what a public company will need to ask is whether there is a real likelihood that a material parcel of shares could be sold eg, if there was a margin call. But there may be a number of different issues involved before disclosure is required.

John Fitzpatrick  
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