



Activist Short Selling		
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Key Messages

Short selling can be a legitimate mechanism for price discovery and liquidity, where the positions are covered and comply with the law.

Activist short selling can improve transparency about a target entity but can be disruptive for the market. ASIC's priority is maintaining fair and properly informed markets. Since INFO 255 was published in May 2021 with better practice expectations, activist short selling has been less disruptive to the Australian equities market.

Background

Short selling is permitted under the Corporations Act if it is covered, or an exemption applies. A short sale is covered where the seller has a presently exercisable and unconditional right to vest in the product (e.g. through a securities lending arrangement).

Activist short selling involves a person taking a short position and then publicly disseminating information (e.g. a report) to negatively impact the price of the product.

Target entities tend to have complex and opaque corporate structures and accounting practices, or poor disclosure. They also tend to have lower market capitalisation.

When activist short sellers provide accurate and meaningful new information, they can have a positive impact on price formation and market integrity – counterbalancing excessive market optimism.

Some activist short sellers have exposed flawed business models, questionable business or accounting practices, insolvency, and fraud in targeted entities.

Activist short sellers can also unduly distort the price of a target entity's securities. For example, by releasing information during trading hours and by making false or misleading statements or using inflammatory language to distort the facts.

ASIC Action

In May 2021 ASIC published an Information Sheet on Activist short selling campaigns in Australia INFO 255 which outlines the practice of activist short selling campaigns in Australia and ASIC's expectations to promote market integrity during these campaigns.

INFO 255 promotes market integrity by outlining better practices for activist short sellers, target entities, market operators and participants, including:

- Activist short sellers should not publish false or misleading statements – they should fact check with the target entity prior to publishing information.
- Short reports should not be released during trading hours – to minimise market disruption.



- Trading should be halted if a short report is released during trading hours – to allow time for the target entity to respond to the allegations and foster an informed market.
- Target entries should respond in detail to allegations and correct errors – to ensure they comply with their continuous disclosure obligations.

Since INFO 255 was published, activist short selling has been less disruptive in the Australian equities market.

An example of this is in July 2022 J Capital short report into Lake Resources was published after the close of trading. A trading halt was called, and the target entity provided a detailed response to the allegations. The market was informed prior to trading recommencing.