

IOSCO TC SC2 project on transparency of short sales in equity securities

Questionnaire responses by question

1.	Please set out how the term short sale/short selling is used and/or legally defined in your jurisdiction.
Australia	<p>The Corporations Act 2001 (the Act) uses the term short selling but does not define it. Instead the Act sets out products that may not be sold unless at the time of the sale the seller has a presently exercisable and unconditional right to vest those products in the purchaser. The products are securities, managed investment products, debentures, stocks and Government bonds.</p> <p>Furthermore, in the Australian environment, the practice of short selling is entwined with stock borrowing practices which results in a level of opacity in the market as to whether a transaction is or is not a short sale.</p>
Brazil	<p>The Brazilian Civil Code permits a private selling contract with deferred delivery of the sold item. In the context of securities markets, a short sale generally means the borrowing of a security at a special system maintained by the stock exchange clearing house, followed by its sale on the exchange.</p>
Canada: Ontario	<p>“Short sale” is not defined in the Ontario <i>Securities Act</i> (“OSA”). However, there is a section (s. 48) on declaration of a short position that refers to a short sale as a sale of a security that the seller does not own at the time the order to sell is placed. The term has always been defined in the rules of the exchanges. It is currently defined in the Universal Market Integrity Rules (“UMIRs”) - currently the rules of the equity exchanges and ATSS - as a sale of a security, other than a derivative instrument, which the seller does not own either directly or through an agent or trustee.</p> <p>Under the UMIRs, a seller is considered to own a security if it: (a) has purchased or has entered into an unconditional contract to purchase the security, but has not received delivery yet; (b) has tendered another security for conversion or exchange or has issued irrevocable instructions to do so; (c) has exercised an option to purchase the security; (d) has exercised a right or warrant to subscribe for the security; or (e) is making a sale of a security that trades on a “when issued” basis and has entered into a binding contract to purchase such security, subject only to the condition of issuance of the security.</p> <p>The seller is not considered to own the security if: (a) it has borrowed the security to be delivered on the settlement of the trade; or (b) the security is subject to any restriction on sale imposed by applicable securities legislation or by a marketplace listing or quoting the security.</p>
Canada: Québec	<p>Appendix B of the text of the Universal Market Integrity Rules, which are applicable to the Toronto Stock Exchange Inc. and the Canadian Venture</p>

	<p>Exchange Inc. defines “short sale”:</p> <p>PART 1 – DEFINITIONS AND INTERPRETATION</p> <p>1.1 Definitions</p> <p>“short sale” means a sale of a security, other than a derivative instrument, which the seller does not own either directly or through an agent or trustee and, for this purpose, a seller shall be considered to own a security if the seller:</p> <p>(a) has purchased or has entered into an unconditional contract to purchase the security, but has not yet received delivery of the security;</p> <p>(b) has tendered such other security for conversion or exchange or has issued irrevocable instructions to convert or exchange such other security;</p> <p>(c) has an option to purchase the security and has exercised the option;</p> <p>(d) has a right or warrant to subscribe for the security and has exercised the right or warrant; or</p> <p>(e) is making a sale of a security that trades on a when issued basis and the seller has entered into a contract to purchase such security which is binding on both parties and subject only to the condition of issuance of distribution of the security,</p> <p>but a seller shall be considered not to own a security if:</p> <p>(f) the seller has borrowed the security to be delivered on the settlement of the trade and the seller is not otherwise considered to own the security in accordance with this definition; or</p> <p>(g) the security held by the seller is subject to any restriction on sale imposed by applicable securities legislation or by an Exchange or Quotation and Trade Reporting System (“QTRS”) as a condition of the listing or quoting of the security.</p>
France	In France, there is no legal definition of the term short sale/short selling. The term is typically used, from an economic prospective to cover the situation where an investor takes a short position on the market, either where the seller does not own the security or where he has borrowed it (and therefore owns it) with the intention of selling it and repurchase it later on to give it back to the securities lender.
Germany	In Germany a short sale/short selling is not legally defined. However, the term refers to a sale of securities or commodities which are not yet owned by the seller. The term is only used in the context of transactions at the spot market.
Hong Kong	Under the law ¹ , short sales are ‘defined’ to mean sales of securities where the seller does not, at the time he sells the securities on the Exchange, have a reasonable and honest belief that he is able to vest the securities in

¹ Section 80(1) of the Securities Ordinance.

	<p>the purchaser. This definition accords with the meaning of the term ‘short sale’ in this survey².</p> <p>In addition, the law³ also describes a (‘covered’) short selling order as:</p> <p>“an order to sell securities in respect of which a seller or a person, for whose benefit or on whose behalf the order is made, has a presently exercisable and unconditional right to vest the securities in the purchaser of them by virtue of having-</p> <p>(i) <i>under a securities borrowing and lending agreement-</i></p> <p>(a) <i>borrowed the securities; or</i></p> <p>(b) <i>obtained a confirmation from the counterparty to the agreement that the counterparty has the securities available to lend to him;</i></p> <p>(ii) <i>a title to other securities which are convertible into or exchangeable for the securities to which the order relates;</i></p> <p>(iii) <i>an option to acquire the securities to which the order relates;</i></p> <p>(iv) <i>rights or warrants to subscribe to and to receive the securities to which the order relates; or</i></p> <p>(v) <i>entered into with another person an agreement or an arrangement of a description as is prescribed under section 146⁴;</i>”</p> <p>This definition is the same as that used in the Rules of the Stock Exchange of Hong Kong Limited (“SEHK”) for the term “short selling”.</p>
Italy	We do not have any legal definition. The term is used in the above described sense.
Japan	<p>The term “short-selling” means the sales of, or the placement or acceptance of orders for the sales of, securities without owning or by borrowing securities.</p> <p>“Short-selling” is divided into two types. One is “short-selling on margin transactions”. The other is “short-selling” that is not based on margin transactions.</p> <p>The term “margin transactions” means the purchase/sale or other transaction of securities effected on credit extended to the customer by a securities company.</p>
Malaysia	<p style="text-align: center;"><i>S41 of the Securities Industry Act</i></p> <p>Subject to this section and any regulations that may be made, a person shall not sell securities unless, at the time when he sells them –</p>

² For the purposes of this survey, we have been instructed that the terms short sale, short selling etc. refer to the economic transaction of establishing a short exposure to an equity security by selling that security on the basis that delivery against the sale will be effected by means of a completed or future ‘borrowing’ of that security.

³ Section 80A of the Securities Ordinance.

⁴ No agreements or arrangements have so far been prescribed.

	<p>(a) he has or, where he is selling as agent, his principal has; or</p> <p>(b) he believes on reasonable grounds that he has, or where he is selling as agent, his principal has,</p> <p>a presently exercisable and unconditional right to vest the securities in a purchaser of the securities</p> <p><i>Rule 22 of the Kuala Lumpur Stock Exchange Rules</i></p> <p>“Regulated short selling” means at the time of the execution of the sale of approved class of securities where the seller: -</p> <ul style="list-style-type: none"> • does not have, at the same time of the said execution, an exercisable and unconditional right to vest the securities in the purchaser <p>BUT</p> <p>(ii) has executed an agreement to borrow, before the time of the sale, that will enable delivery of the said approved class of securities to be made to the purchaser within the Delivery and Settlement Rules of the Exchange.</p> <p>NB: Please note that the terms “short sale” and “short selling” in the remainder of this survey response refer to regulated short selling as defined above, unless stated otherwise.</p>
Mexico	The first disposition of Circular 10-209 issued by the Comision Nacional Bancaria y de Valores (CNBV) defines short sale as the securities transaction performed on a securities exchange, whose settlement is performed by the seller with borrowed securities.
Netherlands	The term “short selling” is not as such a term used in Dutch legislation. However the term “Baisse position” which is related to short selling is used in the Euronext Amsterdam Rulebook, see the answer to question 8.
Singapore	<p>Singapore currently does not have explicit regulations or rules governing short sale. As such, the term short sale/short selling is not legally defined.</p> <p>However, the industry commonly refers to short selling as “creating a short position in a security by selling it without owning it at the time of sale”. The Singapore Exchange (SGX) will buy-in the security against the seller if the seller failed to deliver the security on the due date for settlement.</p> <p>A “naked short sale” is the sale a security without owning the amount sold in full or in part or a corresponding borrowing of that security to cover the short position. Buying-in procedures are instituted only for naked short sales. However, it may be possible for a market participant in a naked short position to avoid having buying-in instituted against him by either borrowing securities to cover the position before settlement date, or entering into a long position on the same day to cover the short position.</p>
Spain	There is not a legal definition of short selling in the Spanish jurisdiction because there is no specific legislation about it. But, from the point of view of trading, the term short selling is used to define the sale of a security:

	<p>a) which the seller does not own but has borrowed the securities before the moment of the sale. These kind of sales are permitted in the Spanish markets; or</p> <p>b) which the seller does not own and has not borrowed the securities before the moment of the sale (what is called “naked short sale”). The naked short sales are not allowed in the Spanish markets, except if the sales are justified with purchases or loans of securities carried out after the precise moment of the sale but on the same trading date.</p> <p>Regarding clearing and settlement, the term short selling would refer, in general, to those sales which have been justified with purchases or loans of securities after the selling date.</p>
Sweden	<p>Sweden has no direct legal definition of short selling, however, in the Act (1991:981) on Trading in Financial Instruments, section 3 paragraph 1, a firm under Finansinspektionen’s supervision has an obligation to make a written contract when the firm disposes of a financial instrument that belongs to someone else. Finansinspektionen has in its regulations laid down rules for the written contract. Also, the Swedish Securities Dealers Association (a trade association) has made some recommendations on this subject.</p>
Switzerland.	<p>We do not have any legal definition. The term is more or less used in the above described sense: selling securities without legally and economically owning them with the idea or the hope to buy them in the future to a lower price. The obligation of the short seller to deliver the security is completed by a securities borrowing transaction. The short position against the buyer is closed within three days (DVP T+3); instead there is a short position open vis-à-vis the lender; a short position reflects therefore the position vis-à-vis the lender.</p>
UK	<p>A short sale/short selling is not defined in UK primary legislation of financial services. Nor does the FSA specifically define the term. However, the term has common usage. It normally refers to a sale of securities by a person who, at the time of entering into the agreement to sell, either does not own those securities or owns them on a non-permanent basis as the result of a stockborrowing or reverse repo agreement.</p>
US	<p>Commission Rule 3b-3 under the Securities Exchange Act of 1934 (“Exchange Act”) defines a short sale as the sale of a security that the seller does not own or a sale that is consummated by delivery of borrowed securities. Under Rule 3b-3, a person shall be deemed to own a security if (a) he or his agent has title to it; or (b) he has purchased, or has entered into an unconditional contract, binding on both parties thereto, to purchase it but has not yet received it; or (c) he owns a security convertible into or exchangeable for it and has tendered such security for conversion or exchange; or (d) he has an option to purchase or acquire it and has exercised such option; or (e) he has rights or warrants to subscribe to it and has exercised such rights or warrants.</p> <p>A person shall be deemed to own securities only to the extent that he has a net long position in such securities. Thus, prior to sale, the person must aggregate his long and short positions to determine his net position.</p>

2.	<p>Would you describe your jurisdiction as having:</p> <ul style="list-style-type: none"> • no market rules (whether those of market operators or market authorities) specifically restricting short sales; • rules permitting short sales but controlling the way in which they may be carried out? • rules prohibiting short selling?
Australia	<p>Australia has rules in the Act that prohibit short selling of certain financial products. However, there are a number of exceptions to the prohibition. Furthermore, the Act enables ASIC (the Regulator) to exempt or modify the application of the short selling prohibition.</p>
Brazil	<p>In general, the Brazilian Civil Code permits a private selling contract with deferred delivery of the sold item. In the context of securities markets, a transaction may be classified in terms of mode and venue of execution:</p> <ul style="list-style-type: none"> • Private – without involvement of a financial intermediary. • OTC – with involvement of a financial intermediary, outside exchanges. • Exchange – with involvement of a financial intermediary, on an exchange. <p>There is no regulatory impediment to a short sale in a private or in an OTC transaction. On the other hand, transactions closed on an exchange must abide by the rules of the settlement cycle, which demands physical delivery within 48 hours (D+2) and financial settlement at D+3. Thus, short selling in exchange transactions mostly involve the borrowing of the security. Securities lending in Brazil is regulated by the National Monetary Council Resolution 2268/96 and the Brazilian Securities Commission Instruction 249/96.</p>
Canada: Ontario	<p>Ontario has rules permitting short sales but controlling the way in which they may be carried out.</p>
Canada: Quebec	<p>We would describe the Québec jurisdiction as having rules permitting short sales but which control the way they may be carried out.</p>
France	<p>There are no specific rules restricting short sales, as defined for the purposes of this survey.</p> <p>Under CMF Rules, the general principle is that the overall balance in a customer’s securities instrument account must not show a debit position. Therefore, an investor who does not own a security would have to borrow it before or at the time he sends a sale order (see below).</p> <p>In addition to the ordinary short sales, a more specific framework has been set up by CMF General Regulation and Euronext for the deferred settled orders (DSO), which are available to investor for the most liquid stocks traded in Euronext-Paris. Under the DSOs, the CMF and the market rules may authorize a buyer or a seller, following execution of such buyer's or seller's order on the market, to defer the payment of the</p>

	<p>funds or the delivery of the securities until a date set by those rules. The buyer, who is irrevocably bound to pay for the securities once his order has been executed, is not required to disburse the funds until the date, set by the market rules, on which the securities are registered in his account. The securities belong to the market member, in whose account they are registered at the date set by the market rules, pending registration in the buyer's account. The seller, who is irrevocably bound to deliver the securities once his order has been executed, only has to deliver them at the date set by the market rules on which his securities account is debited; he retains title to the securities as long as they are registered in his account.</p>
Germany	<p>The German legislation does not prohibit the practice of short selling. However, there are no express statutory regulations governing short sales.</p> <p>In a short sale made by one of its clients, a bank sells securities in its own name for the account of its client. From the legal point of view, a bank grants a third party a non-cash loan in its own name (Section 607 Para. 1 German Civil Code, BGB) for a limited period. The essence of the loan is that the recipient (debtor) is obliged to reimburse the lender (creditor) for that which he has received in things of the same type, quality and amount. Given the price advantage expected by the client, he is able to purchase the securities more cheaply in the over-the-counter market and repay at a profit the non-cash loan with these securities. The lender may charge a fee and demand collateral for the term of the loan. The difference between the selling and buying price is retained by the client as profit or loss.</p> <p>The typically unlimited risk of loss involved in short sales has prompted the legislator to classify short sales as exchange-traded contracts for future delivery (Federal Parliament Publication 11/4177). The legal identity of short sales and lending is decisive for the classification of short sales as exchange-traded contracts for future delivery. In order to provide protection against the particular dangers of exchange-traded contracts for future delivery, the German Stock Exchange Act defines such transactions as non-binding if they are concluded by persons not eligible to buy or sell assets for future delivery. A futures transaction is binding if both contracting parties are merchants registered in the Register of Companies or Register of Cooperatives, or - in the case of a public sector legal entity - registration is not necessary, or are merchants domiciled outside the territorial application of the German Stock Exchange Act, or are merchants who at the time of the conclusion of the transaction or previously had commercially traded in contracts for future delivery or were permanently licensed for stock exchange trading. If only one of the parties to the contract is a merchant, then the transaction is binding if the merchant is subject to the statutory supervision of banks, financial service companies or stock exchanges, and the other party to the contract has been informed in writing prior to the conclusion of the transaction of the particular risks involved in the forward transaction</p>

	<p>(Sections 52, 53 German Stock Exchange Act).</p> <p>Besides that, the General Terms of Condition (which are approved by the Bundesaufsichtsamt für das Kreditwesen⁵, the Federal Banking Supervisory Office) of the German credit institutions and of the German central securities depository (Clearstream Banking AG Frankfurt) contain additional regulations.</p>
Hong Kong	<p>The Hong Kong market has law which prohibits naked short sales. In addition, there is law which spells out specific requirements for conducting covered short sales⁶. (Please refer to answer 1 above)</p> <p>The Rules of the SEHK also contain rules permitting covered short sales but controls the ways in which covered short sales may be conducted. These controls include short selling for specific securities only, short sales must be transacted via the automated trading system of the SEHK and they must be made at or above the current best ask price, i.e., the tick rule.</p> <p>The Code of Conduct for Registered Persons with Securities and Futures Commission (“Code of Conduct”) issued by the HKSFSC also provides supplementary requirements (mainly record keeping requirements) for conducting short selling transactions by registrants.</p>
Italy	We do not have market rules restricting short selling
Japan	Short-selling is permitted but controlled in the way in which it may be carried out.
Malaysia	<p>Section 41 of the Securities Industry Act 1983 generally disallows short selling except in a limited number of situations. One of these exceptions is where the rules of the exchange provide for short selling. In September 1996, the Kuala Lumpur Stock Exchange introduced Rule 22 which paved the way for “regulated short selling” with 50 approved securities. Since August 1997, in light of the East Asian crisis, regulated short selling, and securities borrowing and lending have been suspended. However, the Capital Market Masterplan for 2001-10, which was endorsed and approved by the government, has recommended for regulated short selling, and securities lending to be re-introduced.</p> <p>In short, Malaysia has rules permitting short sales but controlling the way in which they may be carried out, but these have been suspended since August 1997, thus prohibiting short selling.</p>

⁵ In this context we would like to draw your attention to the fact that with effect from 1 May 2002 the *Federal Banking Supervisory Office (Bundesaufsichtsamt für das Kreditwesen; BAKred)*, the *Federal Securities Supervisory Office (Bundesaufsichtsamt für den Wertpapierhandel, BAWe)* and the *Federal Insurance Supervisory Office (Bundesaufsichtsamt für das Versicherungswesen, BAV)* are united in one office, the *Federal Institute for Financial Services Supervision (Bundesanstalt für Finanzdienstleistungsaufsicht, BAFin)*.

⁶ For all covered short selling orders as defined in section 80A of the Securities Ordinance, specific reporting requirements set out in sections 80B and C of the Securities Ordinance are applicable.

Mexico	In Mexico short selling is permitted. However Circular 10-209 sets certain restrictions regarding the place, type of securities and persons who can carry out this kind of transactions.
Netherlands	Since short selling is not regulated in the Netherlands, general rules apply. Euronext Amsterdam N.V., as a recognised exchange, has laid down reporting requirements on its members with respect to short positions in Euronext Amsterdam traded / listed securities. An overview of cumulative short positions in these securities is published on a two week basis (see the answer to question 8).
Singapore	<p>The MAS has not established regulations specifically restricting or prohibiting short sales. We are of the view that both types of market forces, i.e. investors taking short or long positions, will contribute to the price discovery process. Thus, we do not see the need to take measures to restrict short sales only. Our regulatory concerns are largely in managing any potential settlement risks arising from naked short sales and discouraging possible market manipulation. In this regard, we believe that the existing market mechanisms addressed these concerns adequately.</p> <p>Under Rule 6.7 of the securities trading arm of the SGX (SGX-ST), the SGX has the power to declare any securities as “Designated Securities” if there has been manipulation or excessive speculation in the securities. During the period of such declaration, the SGX is empowered to impose such conditions as it thinks fit. One of the conditions it is empowered to impose under the Rule 6.7 is to restrict short selling.</p> <p>The SGX also has rules/bye-laws on buying-in of securities in the event of a inability to deliver securities by the seller upon settlement. The SGX as well as market participants have established securities borrowing and lending facilities to enable short sellers to deliver securities on settlement date.</p>
Spain	<p>From the point of view of the trading, the ways of order handling and the impact on the market, there is no specific legal regime for short sales, but the article 64 of the Reglamento de Bolsas (Stock Exchange Regulations) provides that on the cash market the sellers can only trade with the securities which they own previous to the sale. Although the aforementioned article 64 of the Stock Exchange Regulations do not specifically mention it, the market considers that the interpretation a) of short sales in question 1 and intraday short sales are not against such article.</p> <p>From the point of view of clearing and settlement, the Servicio de Compensación y Liquidación de Valores (SCLV)⁷ regulation discourages</p>

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- ⁷ The Servicio de Compensación y Liquidación de Valores (SCLV) is the Spanish Central Securities Depository, in which charge is the register of securities represented by means of book entry and the exclusive management of the clearing and settlement of trades done in the Spanish Stock Exchanges, in the AIAF Fixed Income Market, as well as in the Latin American Securities Market (Latibex).

	that short sales are carried out by imposing a fine when the short sales are justified with purchases or loans carried out after the selling date. That means there is no fine in case that sales are justified with purchases or loans carried out after the precise moment of the sale but on the same trading date.
Sweden	Sweden can, except the case mentioned in Para 3, be described as having rules permitting short sales but controlling the way in which they may be carried out.
Switzerland	No market rules to date; the issuers announced to raise the discussion for a minimal regulation; a first step could be the reporting and disclosure of short selling figures resp. about securities borrowing resulting from short sales (as said previously the short position as such against the buyer exists for a maximum of only three days), or restrictions of short sales under specific circumstances.
UK	<p>Neither UK primary legislation, nor the FSA prohibits the practice of short selling. Nor are there any rules imposing controls on the market processes by which short selling is effected. However, as described in the response to Q.3, there are a number of regulatory and other factors that influence short selling activity.</p> <p>Neither of the two UK recognised investment exchanges (RIES) providing market facilities in equities (The London Stock Exchange and virt-x) prohibits short sales</p>
US – SEC	<p>In the United States, short selling is permitted, however, there are rules in place controlling the way in which short sales are carried out. Section 10(a) of the Exchange Act gives the Securities and Exchange Commission (“Commission”) plenary authority to regulate short sales of securities registered or admitted to unlisted trading privileges on a national securities exchange (exchange-listed securities) as necessary to protect investors. Under Section 10(a), the Commission has the power to regulate all short sales of exchange-listed securities, whether effected on an exchange or over the counter. Paragraph (a) of Rule 10a-1 generally covers short sales that are reported pursuant to an “effective transaction reporting plan” and information as to such trades is made available in accordance with such plan on a real-time basis to vendors of market transaction information. Paragraph (b) applies to short sales on national exchanges in securities that are not covered by paragraph (a).</p> <p>Rule 10a-1(a)(1) provides that, subject to certain exceptions, an exchange-listed security may be sold short: (i) at a price above the price at which the immediately preceding sale was effected (plus tick), or (ii) at the last sale price if it is higher than the last different price (zero-plus tick). Conversely, short sales are not permitted on minus ticks or zero-minus ticks, subject to narrow exceptions. The operation of these provisions is commonly described as the “tick test.”</p> <p>The Commission's statutory authority to regulate short sales extends to over-the-counter securities as well. This power derives from numerous sources. For example, Section 23 (a) of the Exchange Act (granting the Commission the power to make "such rules and regulations as may be necessary or appropriate" to implement the provisions of the Act); Section 19 (a) of the Securities Act of 1933 (Securities Act) (conferring</p>

the power to promulgate rules necessary to carry out its provisions); Section 17 (a) of the Securities Act and Section 10 (b) of the Exchange Act (proscribing manipulative or deceptive activity in connection with the purchase or sale of securities). To date, the Commission has not used this authority.

The markets also have short sale regulations. For example, NYSE Rule 440 generally incorporates Rule 10a-1. The Commission has approved on a pilot basis short sale rules for the over the counter market. The National Association of Securities Dealers ("NASD") Rule 3350 covers short sales in Nasdaq National Market Securities ("NMS"). NASD Rule 3350 prohibits NASD members, subject to certain exceptions, from effecting short sales in NMS securities at or below the best bid when the best bid displayed is below the preceding best bid in a security. If there is an "upbid" in a security, i.e., the best bid displayed is above the preceding best bid, there is no restriction on the price that a NASD member can sell an NMS security short.

3.	Are there any other material factors in your jurisdiction (e.g. legal or fiscal) that restrict the practice of short selling?
Australia	<p>The practice of short selling is also restricted through the operating rules of financial markets. For instance, one of the exceptions to the prohibition permits a market operator through its operating rules to authorise short selling. In this questionnaire references to operating rules of financial markets will refer to the operating rules of the Australian Stock Exchange.</p> <p>In addition, regulations may be made under the Act to modify the operation of the legislation.</p>
Brazil	Pension funds are not allowed to engage in short selling.
Canada: Ontario	The <i>Canada Business Corporations Act</i> ("CBCA") prohibits short selling by insiders of companies that have distributed their securities to the public (where there are still outstanding securities). Also, short selling must be carried out in a margin account, subject to specific margin requirements.
Canada: Quebec	<p><i>Canada Business Corporation Act</i> has provisions with regard to the practice of short selling by insiders of a distributing corporation.</p> <p>The relevant provisions of the <i>Canada Business Corporation Act</i> are:</p> <p>126. (1) In this Part,</p> <p>"distributing corporation" «<i>société ayant fait appel au public</i>»</p> <p>"distributing corporation" means a corporation, any of the issued securities of which are or were part of a distribution to the public and remain outstanding and are held by more than one person;</p> <p>"insider" «<i>initié</i>»</p> <p>"insider" means, except in section 131,</p> <p>(a) a director or officer of a distributing corporation,</p> <p>(b) a distributing corporation that purchases or otherwise acquires, except by means of a redemption under section 36, shares issued by it,</p> <p>(c) a distributing corporation that purchases or otherwise acquires or sells shares issued by any of its affiliates, or</p> <p>(d) a person who beneficially owns more than ten per cent of the shares of a distributing corporation or who exercises control or direction over more than ten per cent of the votes attached to shares of a distributing corporation, excluding shares owned by an underwriter under an underwriting agreement while those shares are in the course of a distribution to the public;</p> <p>"officer" «<i>dirigeant</i>»</p> <p>"officer" means</p> <p>(a) the chairman, president, vice-president, secretary, treasurer, comptroller, general counsel, general manager, managing director or any other individual who performs functions for a corporation similar to those</p>

normally performed by an individual occupying any such office, and
(b) each of the five highest paid employees of a corporation including any individual mentioned in paragraph (a);

"share" *«action»*

"share" means a share carrying voting rights under all circumstances or by reason of the occurrence of an event that has occurred and that is continuing, and includes

- (a) a security currently convertible into such a share, and
- (b) currently exercisable options and rights to acquire such a share or such a convertible security.

Further interpretation

(2) For the purposes of this Part,

(a) a director or an officer of a body corporate that is an insider of a distributing corporation is deemed to be an insider of the distributing corporation;

(b) a director or an officer of a body corporate that is a subsidiary is deemed to be an insider of its holding distributing corporation;

(c) a person is deemed to own beneficially shares beneficially owned by a body corporate controlled by him directly or indirectly;

(d) a body corporate is deemed to own beneficially shares beneficially owned by its affiliates; and

(e) the acquisition or disposition by an insider of an option or right to acquire a share is deemed to be a change in the beneficial ownership of the share to which the option or right to acquire relates.

Deemed insiders

(3) For the purposes of this Part,

(a) if a body corporate becomes an insider of a distributing corporation, or enters into a business combination with a distributing corporation, a director or an officer of the body corporate or a shareholder of the body corporate who is a person referred to in paragraph (d) of the definition "insider" is deemed to have been an insider of the distributing corporation for the previous six months or for such shorter period as he was a director, an officer or such a shareholder of the body corporate; and

(b) if a distributing corporation becomes an insider of a body corporate or enters into a business combination with a body corporate, a director or an officer of the body corporate or a shareholder of the body corporate who is a person referred to in paragraph (d) of the definition "insider" is deemed to have been an insider of the distributing corporation for the previous six months or for such shorter period as he was a director, an officer or such a shareholder of the body corporate.

Definition of "business combination"

(4) In subsection (3), "business combination" means an acquisition of all or substantially all the property of one body corporate by another or an amalgamation of two or more bodies corporate.

	<p>130. (1) An insider shall not knowingly sell, directly or indirectly, a share of the distributing corporation or any of its affiliates if the insider selling the share does not own or has not fully paid for the share to be sold.</p> <p>Calls and puts</p> <p>(2) An insider shall not, directly or indirectly, buy or sell a call or put in respect of a share of the corporation or any of its affiliates.</p> <p>Exception</p> <p>(3) Notwithstanding subsection (1), an insider may sell a share he does not own if he owns another share convertible into the share sold or an option or right to acquire the share sold and, within ten days after the sale, he</p> <p>(a) exercises the conversion privilege, option or right and delivers the share so acquired to the purchaser; or</p> <p>(b) transfers the convertible share, option or right to the purchaser.</p> <p>Offence</p> <p>(4) An insider who contravenes subsection (1) or (2) is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding six months or to both.</p>
France	-
Germany	There are no further legal or fiscal restrictions on the practice of short selling.
Hong Kong	No.
Italy	None.
Japan	Accepting orders for margin transactions, a securities company shall receive margin deposit from its customer based on the Securities Exchange Law.
Malaysia	In August 1997, the Malaysian Government took the decision to impose trading restrictions on certain securities and prohibited both regulated short selling and securities borrowing and lending. These were introduced during the period of very high volatility at the time of the Asian crisis. These restrictions remain to this day.
Mexico	No.
Netherlands	No. However, Euronext Harmonised rulebook I states in section 3004 that fraudulent or misleading conduct is not allowed ⁸ .

⁸ **A Member shall refrain from:**

(i) taking any action or engaging in any course of conduct that is aimed at artificially moving the price or value of any Admitted Financial Instrument or the level of any index of which an Admitted Financial Instrument is a component;

(ii) entering artificial orders or otherwise entering into or causing any artificial

Singapore	While there is no specific rule restricting short sales, market participants are aware that any naked short positions that are not covered by settlement date (e.g. through the borrowing of securities), would be subject to buying-in procedures established by the SGX. According to the SGX's buying-in procedures, the starting point of buying-in is at two bids above the closing price of the previous day, the current last transacted price or the current bid price, whichever is the highest. If there is no seller, SGX will progressively raise the bid price until the position is closed out. Market participants are well aware of the market risks involved in naked short sale and this acts as a significant factor in limiting short selling to those who have a certain view on the direction of the market.
Spain	There are no material factors that restrict the practice of short selling, apart from the fines imposed by the SCLV.
Sweden	We do have a regulation that prohibits short selling for someone who is an insider in a company. They are not allowed to acquire (or lend) equity and equity related instrument, in said company, and then sell them within three months.
Switzerland	Specifically none; under supervisory aspects see cf. 7 and 13.
UK	<p>There are a number of factors that may be relevant to the nature, scale and process of short selling in the UK. These include:</p> <p><u>Fiscal costs.</u> Although stamp duty (50 basis points) has not been levied on stock borrowing since 1997, end investors remain subject to stamp duty on the repurchase of securities to close out the transaction. (Intermediaries are exempt from stamp duty in respect of any purchase of UK securities on an EEA exchange, provided they are registered as an intermediary on that exchange and the securities are regularly traded there.)</p> <p><u>Little intermediary interest in assisting retail clients with short sales.</u> Few brokers are prepared to undertake short sales on behalf of retail clients, particularly now that T+3 settlement effectively reduces the scope to run open positions and therefore requires the costs of stock borrowing and obtaining adequate collateral from the client. .</p> <p><u>Relatively little stock available to borrow in smaller companies.</u> The main potential source of stock in smaller companies is held by founder shareholders or institutions specialising in smaller companies. Neither are normally interested in lending stock if it is likely to lead to a lower share price.</p>
US – SEC	<u>Margin</u> - Short sellers face certain margin requirements. The Federal Reserve Board margin requirement for a short sale is generally 150% of the current market value of a security. Depending on market fluctuations, the customer may be required to deposit additional margin or he may have excess equity in his account. See NASD Rule 2520(c); NYSE Rule

Transaction;

(iii) reporting a fictitious Transaction or any other false data to Euronext or causing such data to be input into any Euronext system;

431(c).

Delivery of Securities – Commission Rule 15c6-1 generally requires that a broker-dealer shall not effect or enter into a contract for the purchase or sale of a security that provides for payment of funds and delivery of securities later than the third business day after the date of the contract, unless expressly agreed to by the parties at the time of the transaction. Currently there are no Commission rules setting forth additional delivery obligations for short sales, although most self-regulatory organizations (“SROs”) have adopted such rules. For example, New York Stock Exchange (“NYSE”) Rule 440C states that no NYSE member or member organization should “fail to deliver” against a short sale of a security on a national securities exchange until a diligent effort has been made by such member or member organization to borrow the necessary securities to make delivery. NASD Rule 3370 states that no National Association of Securities Dealers (“NASD”) member, or person associated with a member, shall effect a short sale for a customer or for its own account unless the member makes an “affirmative determination” that the member can borrow the securities or otherwise provide for delivery of the securities by settlement date. This requirement applies regardless how a short sale order is received, e.g., through the telephone, an electronic transmission, the Internet, or otherwise. This requirement does not apply to transactions in corporate debt securities, to bona fide market making transactions by Nasdaq market makers, or to transactions which result in fully hedged or arbitrated positions.

Closing of Short Positions - The SROs also have adopted additional rules imposing mandatory close-outs for failures to deliver stemming from short sales. For example, NASD Uniform Practice Code Rule 11830 imposes a mandatory close-out requirement for Nasdaq securities which have a clearing short position of 10,000 shares or more and that are equal to at least one-half of one percent of the issuer’s total shares outstanding (a clearing short position is a "short" position appearing at the clearing corporation as the result of a fail to deliver). Rule 11830 generally requires that a contract involving a short sale in these specified securities, for the account of a customer or for an NASD member’s own account, which has not resulted in delivery by the broker/dealer representing the seller within 10 business days after the normal settlement date (currently transaction date + 3 days), must be closed by the broker/dealer representing the seller by purchasing for cash or guaranteed delivery of securities of like kind and quality. This mandatory close-out requirement does not apply to bona-fide market making transactions and transactions that result in fully hedged or arbitrated positions.

4.	If you have short selling rules or regulations, please indicate whether they apply to all equities or only particular subsets of equities (e.g. illiquid securities, domestic securities etc).
Australia	<p>The short selling rules in the Act applies to securities, managed investment products, debentures, stock and government bonds. The Corporations Regulations 2001 provide that the short selling prohibition does not apply in relation to options or un-obtained shares.</p> <p>The Australian Stock Exchange operating rules permit short selling in a subset of highly liquid equity securities and exempt certain other product types. E.g Options.</p>
Brazil	Rules on securities lending apply to all exchange traded equities. There are no specific rules on short selling.
Canada: Ontario	The OSA requirements apply to all equities (including OTC) and the UMIRs apply to listed or quoted equity securities.
Canada: Quebec	Short selling regulation applies to all equities.
France	CMF rules and Euronext rules apply to all securities traded on Euronext. Under Euronext rules, the Deferred Settlement and Delivery Orders (DSOs) are available only to the most liquid stocks (i.e.about 200 stocks).
Germany	The regulation as mentioned under Question 2 is applies to all equities admitted to trading on a German cash market.
Hong Kong	<p>The law (i.e., section 80(1) of the Securities Ordinance) which prohibits naked short selling applies to transactions on the SEHK. That is to say, if a short sale is made off exchange, the prohibition does not apply.</p> <p>The Rules of the SEHK permit covered short selling of specific listed securities, these securities are referred to as Designated Securities for short selling. Designation of securities is done pursuant to a set of Selection Criteria. The Selection Criteria are currently as follows:</p> <ul style="list-style-type: none"> (a) all constituent stocks of indices which are the underlying indices of equity index products traded on the Exchange; (b) all constituent stocks of indices which are the underlying indices of equity index products traded on Hong Kong Futures Exchange Limited; (c) all underlying stocks of stock options traded on the Exchange; (d) all underlying stocks of Stock Futures Contracts (as defined in the rules, regulations and procedures of Hong Kong Futures Exchange Limited) traded on Hong Kong Futures Exchange Limited; (e) stocks that meet the minimum liquidity requirement for the issuance of basket derivative warrants (i.e. market capitalisation of public float of not less than HK\$1 billion, being maintained for the 60 days' qualifying period); (f) stocks with market capitalisation of not less than HK\$1 billion and an annual turnover to market capitalisation ratio of not less than 40%;

	(g) Tracker Fund of Hong Kong and other Exchange Traded Funds approved by the Board in consultation with the Commission; and (h) all securities traded under the Pilot Program ⁹ .
Italy	n.a.
Japan	Short-selling regulations are applied to listed products(stocks, ETFs, etc) in the Securities Exchange or OTC market. As to margin transactions, the restriction, that is “the mark and confirm rule” under the short selling regulation, only applies to certain stocks which is designated by the stock exchanges taking into account such factors as its liquidity, distribution of shareholders.
Malaysia	Rule 22 of the KLSE apply to a set of 50 approved securities traded on the exchange.
Mexico	The short selling rules established by Circular 10-209 only permit short selling of high and medium liquidity equity securities, therefore all debt securities and lower liquidity equities can not be shorted .
Netherlands	Reporting requirements (see question 8) apply to all baisse positions that members have in securities that were admitted to trading by Euronext Amsterdam. Outstanding short positions that propriety traders (locals) have must also be reported by their clearing members to Euronext Amsterdam
Singapore	The Board of Directors of the SGX-ST may declare as security as a “Designated Security” if they are satisfied that there has been manipulation or excessive speculation in the security. The SGX may restrict or prohibit short sales of designated securities.
Spain	What has been said in the previous questions is applicable to all the securities listed on the Spanish cash markets. And the fines imposed by the SCLV, , are applicable to all the securities listed on the Spanish Stock Exchanges in the AIAF Fixed Income Market, as well as in the Latin American Securities Market (Latibex).
Sweden	The rules apply to all financial instruments.
Switz.	n.a.
UK	Not applicable
US–SEC	As stated in our response to Question #2, Commission Rule 10a-1 applies to short sales of exchange-listed securities, whether effected on the exchange or over-the-counter. The NASD’s short sale rule, Rule 3350 applies to transactions in Nasdaq National Market securities, but not to Nasdaq SmallCap, OTCBB, and other securities traded over-the-counter.

⁹ **The Pilot Program is an arrangement between NASDAQ/AMEX and SEHK to facilitate cross- trading. Currently, 7 NASDAQ shares and some AMEX Exchange Traded Funds are trading on the SEHK under this program.**

5.	Please describe briefly the reasons why your jurisdiction regulates/ does not regulate short selling? What are the principal objectives in regulating short selling? Are the considerations particularly influenced (one way or the other) by local market characteristics, e.g., a market making structure?
Australia	<p>Short selling is regulated in the interests of protecting unsophisticated investors and in the interests of maintaining a fair, orderly and efficient market.</p> <p>The short selling regime was introduced in 1980, and in 1981 the Campbell Committee¹⁰, which reviewed the efficacy of the law, made a number of observations on the practice of short selling including the observation that unrestricted short selling in Australia had the potential to:</p> <ul style="list-style-type: none"> • result in market instability; • have a volatile effect on the price of shares given the size of the market; • expose unsophisticated investors to excessive risk; and • undermine the industry by the failure of a major short seller to meet his obligation.
Brazil	N/A.
Canada: Ontario	Short selling is regulated because it is considered to be a potential risk to the maintenance of fair and efficient markets. The principal objectives in regulating short selling are to ensure that the market is allowed to find its level in an orderly manner without allowing market participants to use short selling to create artificial prices or manipulate the market. The considerations are influenced by local market characteristics to the extent that auction markets require integrity in prices to allow appropriate price discovery.
Canada: Quebec	The rationale behind short selling regulation in Québec is to avoid market manipulation and to ensure investor protection. The regulation mirrors our market characteristics, i.e. an auction market where short sales regulation is based on the last sale price registered by the market.
France	<p>The restrictions in place regarding naked short selling aim at contributing to the smooth operation of the settlement process.</p> <p>The Monthly Settlement Market (which disappeared in September 2000,) has long been a large exception to the requirement that investors should own the securities sold. DSOs were set up as an alternative to the Monthly settlement Market, but by contrast, DSOs are immediately cash settled. If the investor does not own the securities, the intermediary will</p>

¹⁰ "Report of the Committee of Inquiry into the Australian Financial System" (1981) at page 382 in Kedzior, A., "Short selling in Australia" (1988) Adel LR 327 at pages 333 and 334.

	borrow them so that the transaction on the market be exactly the same as for ordinary, non-DSOs, orders.
Germany	There are no express statutory regulations governing short sales. The existing regulations as mentioned in Question 2 are based on the consideration that short selling is not regarded as a special risk for the efficiency of the equity markets. However, the BAWe also recognises short selling may be used as a means of conducting market manipulation or insider dealing. Please note in this context, that several measures are planned in this regard which may be incorporated in the Fourth Financial Market Promotion Act ¹¹ . These involve the proposals for the diversification of the reporting requirements set out in section 9 of the Securities Trading Act to include security-based repurchase agreements and securities lending transactions and the implementation of rights of access concerning the lending data accumulated in connection with security-based repurchase agreements and securities lending transactions at banks and clearing houses (holding before and after the transaction, borrower and lender). This will firstly create the necessary transparency. Secondly, it will make available to the BAWe information on the positions held. Together with the information on short sales the BAWe will thus be supplied with the data enabling it to intervene in times of crisis. Moreover, these data can be used for the detection and prosecution of insider trading offences.
Hong Kong	<p>When the Securities Ordinance was enacted in 1974, short selling was prohibited. It was considered to have negative impacts on the market, as it would exacerbate the downward pressure on the prices of shares in a falling market. It might lead to short squeezing when short sale positions were unwound</p> <p>In 1988, the Securities Review Committee (the SRC) recommended in its report that regulated short selling should be permitted in Hong Kong if there are necessary safeguards and regulations. The recommendation was made after a careful consideration of the market benefits which can be derived from short selling and with an intention to bring the Hong Kong market in line with other major financial markets. In view of the recommendations of the SRC, the SFC and the SEHK developed a regulatory framework for “covered” short selling that was implemented in January 1994. Generally, covered short selling was permitted in specific securities and subject to the tick rule. The safeguards and regulations for short selling which were introduced are aimed at reducing the negative impacts discussed above and the possibility of making use of short selling to manipulate the market. (Please refer to answers 2 and 4 above which described the main features of short selling on the SEHK and the Selection Criteria).</p> <p>The Commission has since 1994 created certain exemptions from the</p>

¹¹ In this context we draw special attention to the fact that the Fourth Financial Market Promotion Act is still being discussed. For this reason, it is not possible at the moment to state whether the planned amendments and new regulations will come into force.

¹² Rule 17 of the Securities (Miscellaneous) Rules.

	naked short selling prohibition in section 80(1) of the Securities Ordinance ¹² . In general, these exemptions allow naked short selling where the transactions are considered to be market neutral or are not directional trades. (e.g. short selling in the performance of market making obligations, or by market makers for hedging purposes etc.)
Italy	<p>In August 1990, Consob prohibited short-selling in order to prevent short sellers from accelerating a declining market in an extraordinary situation. The measure was abandoned as an orderly marketplace was established.</p> <p>In December 1990, Consob Resolution n. 51/90 established rules requiring members to report daily to the regulator short positions for each securities as well as the quantity of securities bought to cover prior short sales positions. The aim was to be acknowledged of the whole amount of short sales for each securities listed and to disseminate this information to the market. Issues related to the enforcement of the rules and to the difficulty to control the correspondence of short positions declared to those effectively in place led to abandon this reporting requirement.</p>
Japan	Main purposes of short-selling regulations are to prevent manipulations, because short-selling can be exploited for intentional “bear raid”. The sale on margin transactions is exempted from short selling regulations because stock exchanges, etc has measures to restrict excessive margin transactions. Short-sellings for market making are exempt from the short-selling regulations.
Malaysia	Regulated short selling was introduced in 1996 to allow for trading strategies to be affected on the Kuala Lumpur Options and Financial Futures Exchange through the short selling of underlying securities. However, it was also felt that unregulated short selling could pose significant risk to market stability, especially in instances of lower-capitalised stocks or small public float thus leading to the “cornering” or “squeezing” of such stocks. It was felt that any short selling on approved stocks needed to be transparent, through clear reporting and disclosure to the exchange and market overall. However, during the East Asian crisis, concerns were raised over the impact of short selling, and securities borrowing and lending on market and financial stability, as a result of which the government decided suspend such activities until further notice.
Mexico	Short selling is part of sophisticated market strategy followed by investors and therefore it has been considered convenient to permit these type of transactions. However, short selling implies higher risks and therefore it’s necessary to establish a set of rules to be followed in order to carry them out. Since there are some illiquid equity securities in Mexico, it was decided not to permit short selling of those securities. Some other rules were established such as borrowing the securities intended to be shorted before offering them, not to sell at a lower price from the last observed in the exchange and to tag the sale as a short sell in the trading system (it’s not disclosed to other participants, but it helps to enforce the rules and simplifies the calculation of market statistics).
Netherlands	The NAFM has no indication that short selling disturbs the proper operation of the securities markets.
Singapore	With the buying-in mechanism to ensure timely settlement, the SGX and

	market participants have an adequate level of comfort that investors would not engage in reckless short selling without taking account of their exposure to market risks.
Spain	The SCLV regulation about short sales has the objective of avoiding that the investors obtain a gain with this kind of trading practices. In that sense, the fine for short sales is a percentage of the effective volume of the sale and proportional to the number of days between the selling and the purchase date or lending date.
Sweden	The reason mentioned in the law to allow short sales is that the prices on the financial instrument will be more fair if it is possible for a investor that doesn't have the financial instrument in his possession to influence the price of the financial instrument. It is also argued that this reduces the risks in the market and improves the liquidity.
Switzerland	Up until to now, rules seemed to be not necessary as no substantial misuse or irregularities had taken place in our markets; for advantages / disadvantages of short sales see cf. 17.
UK	<p>The UK does not regulate short selling for two main reasons:</p> <p>The equity market structure has, until relatively recently, been a predominantly market making structure. Registered market makers obliged to provide liquidity have no option but to go short if they are to offer a continuous service. Although UK market structure is changing, with all the more liquid equities now traded increasingly on electronic order-books, intermediary capital still plays a significant role. Intermediaries may frequently need to go short to meet client needs, e.g. to fill a client buy order or to hedge a 'downside' position sold to a client.</p> <p>In addition, the FSA does not consider that short selling (per se) is impairing the efficiency of the UK equity market or detracting from market confidence. In particular, it recognises that short selling can have a potentially valuable role to play in accelerating price correction processes and enhancing liquidity. However, the FSA also recognises that short selling, though not in itself a form of market misconduct, may be used (like long selling or buying) as a means of conducting market abuse, such as market distortion, price positioning etc.</p> <p>As market structure and trading techniques evolve, the FSA periodically reviews any new risks to the markets that may arise from short selling.</p>
US –SEC	<p>The Commission adopted Rule 10a-1 in 1938 after several years of considering the effects of short selling in a declining market. By adopting Rule 10a-1, the Commission sought to achieve three objectives:</p> <ul style="list-style-type: none"> (i) allow relatively unrestricted short selling in an advancing market; (ii) prevent short selling at successively lower prices, thus eliminating short selling as a tool for driving the market down; and (iii) prevent short sellers from accelerating a declining market by exhausting all remaining bids at one price level, causing successively lower prices to be established by long sellers.

	<p>Although short selling serves useful market purposes, it also may be used to manipulate stock prices. One example is the “bear raid” where an equity security is sold short in an effort to drive down the price of the security by creating an imbalance of sell-side interest. Unrestricted short selling can also exacerbate a declining market in a security by increasing pressure from the sell-side, eliminating bids, and causing a further reduction in the price of a security by creating an appearance that the security price is falling for fundamental reasons.</p> <p>The Commission has considered market structure characteristics in regulating short sales. As discussed in Question #2, the Commission has approved, on a pilot basis, a separate short sale rule (NASD Rule 3350) for the Nasdaq market. The NASD “bid test” was approved in part in recognition of the differences between the auction and dealer markets. Unlike exchange markets, there may be 50 or more geographically dispersed Nasdaq market makers for any one security. While market makers are required to enter last sale reports within 90 seconds after execution, trade reports do not emanate from a single point for consecutive reporting, and the trades therefore do not necessarily appear in chronological order. Partly for this reason, Nasdaq has chosen not to use a tick test based on last sale prices in regulating short sales on Nasdaq.</p>
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6.	Please describe the legal/ regulatory framework within which short selling is regulated in your jurisdiction, i.e. the legislative source and downward cascade of rule making and supervisory responsibilities.
Australia	<p>The legal and regulatory framework within which short selling is regulated consists of the Act, the Corporations Regulations 2001 and the operating rules of the Australian Stock Exchange.</p> <p>ASIC is responsible for pursuing breaches of the Corporations Act and Regulations.</p> <p>The Australian Stock Exchange is responsible for supervision of its operating rules and for taking action for breaches of those rules. In appropriate circumstances, it may refer serious contraventions of the Act or the rules to ASIC for further action.</p>
Brazil	<p>Strictly speaking, short selling is not regulated in Brazil. Securities lending, on the other hand, is. See answer (2). The National Monetary Council is the main regulatory and supervisory authority on the financial markets, followed by the Brazilian Securities Commission.</p>
Canada: Ontario	<p>The OSA requirement is that sellers must declare to their agents (dealers) that they do not own the security. In the OSA Regulation, there are also record-keeping requirements relating to short positions (to show all long and short positions separately, and provide the location of long positions and offsetting short positions). These provisions are enforced at the OSC level, but are generally covered in the rules at the marketplace/SRO level. They apply to all securities.</p> <p>In National Instrument 21-101 <i>Marketplace Operation</i> (“NI 21-101”), there are further record-keeping requirements applicable to marketplaces, such as that the record for each order must reflect if it is a short sale. Also, in National Instrument 23-101 <i>Trading Rules</i> (“NI 23-101”) there are audit trail requirements applicable to dealers that include recording whether a sale is a short sale. These general requirements apply to all securities and, once again, the more specific rules are found at the marketplace/SRO level.</p> <p>The detailed, SRO-level rules for short selling equity securities are found in the UMIRs. Participating Organizations of the equity exchanges and subscribers to equity ATs are currently subject to the UMIRs. These rules are administered on behalf of the exchanges and for ATs by Market Regulation Services Inc. (“RS Inc.”), a recently recognized SRO. Member regulation is carried out in Ontario by the Investment Dealers Association of Canada (“IDA”) and the IDA’s rules cover margin, records, segregation, supervision and financial reporting requirements.</p> <p>The OSC, with other Canadian securities commissions, oversees these SROs by reviewing and approving their rules and by-laws.</p>
Canada: Quebec	<p>The Québec regulatory framework which regulates short selling comprises various sources:</p>

	<ul style="list-style-type: none"> • The Québec <i>Securities Act</i> regulates short selling on a high level since it holds that no person may sell a security short without previously notifying the dealer responsible for carrying out the transaction. • The Québec <i>Regulation Concerning Securities</i> has some provisions with regard to the information that must be kept in the accounting books and registers by a dealer who has its head office in Québec in connection with short positions. • The provisions of the Québec <i>Securities Act</i> and of the Québec Regulation are enforced by the <i>Commission des valeurs mobilières du Québec</i> or by the self-regulatory organizations depending on the registration category of the dealer. • National Instrument 21-101 “Marketplace Operation” and National Instrument 23-101 “Trading Rules”, which are two national instruments adopted by Canadian Securities Administrators, set out requirements that Canadian regulators consider minimum requirements applicable to all marketplaces and participants in the market. These requirements include provisions regarding recordkeeping requirements for marketplaces and Audit Trail requirements for short sales. • These National Instruments are enforced by Canadian Regulators when approving rules and rule amendments of the self-regulatory organizations. • The Canadian Regulatory Services Provider, named Market Regulation Services Inc. (“RS”), which is recognized as a self-regulatory organization, has the mandate to establish market rules and the supervisory responsibility to enforce market regulation for alternative trading systems and exchanges with which a regulation services agreement is signed. RS’s Rules are called “Universal Market Integrity Rules”. • At the moment, the Toronto Stock Exchange and the Canadian Venture Exchange have signed regulation services agreements with RS. • With regard to short sales, RS’s rules comprise the definition of short sale and provisions regarding restrictions on short selling, order entry and exposure of short sale, designation of order and report on short positions. • RS is responsible for enforcing market regulation related to short sales. • All the rules adopted by RS have to be approved by the <i>Commission des valeurs mobilières du Québec</i> and the other relevant Canadian regulators prior to becoming effective. • Member regulation related to short sales is enacted and enforced by the two self-regulatory organizations that perform member regulation
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	<p>activities in Québec. These two self-regulatory organizations are the <i>Bourse de Montréal Inc.</i> and the Investment Dealers Association of Canada.</p> <ul style="list-style-type: none"> • These two SROs have, in their respective regulation, provisions with regard to short sales but more specifically regarding margin, records requirements, segregation, account supervision and financial report requirements. • All the rules adopted by the two SROs have to be approved by the <i>Commission des valeurs mobilières du Québec</i> or the other relevant Canadian regulators prior to becoming effective.
France	<p>Under the rules of the Conseil des Marchés Financiers (CMF), a customer's securities account held by a custodian may not be in a debit position (which technically prevents short sales). In order to avoid a debit position in the securities account, if need be, the stocks will have to be borrowed at the time of the sale transaction. However, there is a flexibility that permits such a debit position to occur intraday, i.e. until the end of the trading session where the trade took place. Regarding the DSOs, CMF Regulation provides for the minimum guarantee and margins that an investment firm accepting a DSO must require from its customer.</p>
Germany	<p>As mentioned under Question 2, short sales of securities fall into the category of the so-called <i>Börsestermingeschäfte</i> (exchange related options and futures transactions)¹³ which are regulated in Sections 50-70 of the German Exchange Act (Börsengesetz, BörsG). Sections 50-70 BörsG contain inter alia administrative provisions concerning the admission and exclusion of options and futures trading on the exchange, rules of civil law concerning permitted exchange-related options and futures transactions, obligations to give information and the authorisation to prohibit certain transactions. The competence for the supervision of and adherence to the provisions of the BörsG lies with the stock exchange supervisory authorities of the Länder (Bundesaufsichtbehörden der Länder) and the Board of Management of the respective exchange.</p> <p>The general terms and conditions of the credit institutions and the Clearstream Banking AG Frankfurt specify in detail the conditions of securities lending and short sales.</p>
Hong Kong	<p><i>The Law</i></p> <p>The Securities Ordinance is the primary legislation for regulating short selling. Section 80(1) prohibits naked short sales and sections 80A-C spell out specific requirements (e.g. reporting requirements) for</p>

¹³ **The classification is made on the basis of the characteristics features of the exchange-related options and futures transactions. The short sale and the loan on securities constitute an economic and legal unit as far as the relationship between the short seller and the bank/the broker is concerned. The loan payment is made at a later date. Because of its close relation to the loan on securities the short sale is conducted at the spot market turns into an exchange-related options and future transaction.**

	<p>conducting covered short sales. Exemptions from section 80(1) are available under Rule 17 of the Securities (Miscellaneous) Rules.</p> <p><i>SEHK Rules</i></p> <p>The Rules of the SEHK provide rules permitting covered short sales to control the ways in which covered short sales may be conducted by the Exchange Participants. Changes to the Rules require SFC approval.</p> <p><i>Codes issued by the Commission</i></p> <p>The Code of Conduct for Registered Persons with the Securities and Futures Commission (the Code of Conduct) provides supplementary requirements for conducting short selling transactions by SEHK Participants.</p> <p>The SEHK monitors compliance by its participants with the short selling regulations under its rules and is responsible for the front-line surveillance of short selling activities. The SFC shares the same market surveillance system with the SEHK and is therefore able to identify any unusual trading activities. The SFC also includes short selling in its routine or special broker inspection program.</p>
Italy	n.a.
Japan	<p>Securities and Exchange Law</p> <p>Article 162 Item1 (1)</p> <ul style="list-style-type: none"> - No person shall short-sell in violation of the provisions of Cabinet Order. <p>Cabinet Order for Enforcement of Securities and Exchange Law</p> <p>1)Article 26-3 : The “mark and confirm” rule</p> <ul style="list-style-type: none"> - No person shall effect a selling order on securities exchanges and OTC market, unless such order is marked either “long” or “short”. - Member firms of securities exchanges and OTC market shall confirm to its clients whether the client’s selling order is “long” or “short” before effecting such order. <p>(note: there are some exemptions from this rule.)</p> <p>2)Article 26-4 : The “Up-tick” rule</p> <ul style="list-style-type: none"> - A short-selling in a securities is not to be made <ul style="list-style-type: none"> a) below the price at which the last sale was published, or b) at or under the price at the last published sale when the stock price is falling <p>(i.e. the last published price is below the preceding published price.)</p> <p>(note: there are some exemptions from this rule.)</p> <p>3) Ordinance of cabinet office concerning the short selling of the securities</p>

	<p>(1) Excepting the transactions from the “mark and confirm” rule (Article1 and 2)</p> <p>(2) Excepting the transactions from the “price restrictions” rule (Article3 and 4)</p>
Malaysia	Please see above. NB: the Securities Industry Act is administered by the Securities Commission of Malaysia.
Mexico	<p>The regulatory framework consist of secondary regulation issued by the CNBV, Circular 10-195 which regulates securities borrowing and the referred Circular 10-109 which regulates short sales.</p> <p>The authorisations and rules established by both Circulares are granted and enforced by the CNBV. However, some of the restrictions are controlled by the exchange’s trading system.</p>
Netherlands	Since short selling is not regulated in our jurisdiction, the question is not applicable to the Netherlands.
Singapore	Not applicable.
Spain	<p>As it was said in questions 1 and 2, the prohibition of “naked short sales” is provided by the the article 64 of theReglamento de Bolsas (Stock Exchange Regulations). The performance of the Reglamento de Bolsas is supervised by the Comisión Nacional del Mercado de Valores (CNMV), the Spanish Stock Market Regulatory Authority.</p> <p>The fines for short sales imposed by the SCLV, mentioned in the last paragraph of question 2, are regulated in the Circular n°9/2001 of 26 November, about fees and fines of the SCLV. The SCLV is constituted as a limited company born at the shelter of the article 54 of the Securities Market Act 24/1988, of July 24, and after developed by the Royal Decree 116/92, of February 14, of securities representation by means of book entry and clearing and settlement of stock market trades. The supervisory body of the SCLV is the CNMV.</p>
Sweden	See Para 1. A legal rule allowing short selling, Finansinspektionens regulation (Finansinspektionens föreskrifter om handel och tjänster på värdepappersmarknaden, FFFS 1998:21, section 2)).
Switzerland	n.a.
UK	While there is no governmental legislation or FSA regime specifically addressing short selling, the FSA is required to maintain market confidence and provide investor protection. In addition, recognised investment exchanges are required to maintain orderly markets and proper protection of investors.
US:SEC	Please see response to Question #2. The SROs must surveil for, and enforce compliance with, Rule 10a-1 and their own rules. In addition, the Commission’s Office of Compliance Inspections and Examinations also conducts examinations for potential violations.

7.	<p>Please describe your jurisdiction’s regulation of short sales. Please make clear, in particular, whether there are (and, if so, what) controls placed upon:</p> <ul style="list-style-type: none"> • who may conduct short sales, • the venues where short sales may be executed (e.g. only on an exchange), • the way in which the sale may be executed; • any arrangements for delivery in respect of short sales; • The closing out of the short position. <p>Please describe in your response any permitted exceptions to the generality of short selling rules, e.g. for market makers, for derivatives hedging etc.</p>
Australia	<p>The Act</p> <p>The Act prohibits short selling (both on and off market) and creates the following exemptions to the prohibition:</p> <ul style="list-style-type: none"> • Odd lot dealings by a broker who is a member of a licensed market; • A sale that is part of an arbitrage transaction; • Incomplete purchases (involving a sale by a person who has contracted to purchase the product, but has not yet completed that purchase); • Where arrangements are made before the sale that will enable delivery to the buyer within T+3 (if the sale is on market – additional requirement that the purchase is to be on a steady or rising market); and • Market regulated sales (eg. sales on the ASX pursuant to the operating rules). <p>The Act also empowers ASIC to prohibit short selling in respect of financial products generally, or a class of financial products and to modify the operation of the short selling provision.</p> <p>The Corporations Regulations 2001</p> <p>The Corporations Regulations modify the operation of the Corporations Act by excluding Exchange traded options and un-obtained shares from the prohibition.</p> <p>Market Regulated Sales</p> <p>The operating rules of the ASX, which only apply to on market trades, permit short sales of "approved securities" (which are quoted securities in companies and trusts which have a substantial market capitalisation, a substantial number of shares of a particular class on issue, and an active market) and "public securities" which are securities issued by certain</p>

	<p>government and semi-government authorities.</p> <p>The operating rules also:</p> <ul style="list-style-type: none"> • require that the aggregate short sales in an approved security do not exceed 10% of the quoted securities; • provide for an initial margin of 20% of the contract price; • permit closing out of a short sale in circumstances where a client has failed to provide a margin of cover, or fails to provide an additional margin of cover after having been called to do so; • impose a zero-tick rule which requires a short sale to be made at a steady or higher price; • permit short selling of public securities at T+10; • prohibit short selling during the offer period of a takeover offer or in the period following a takeover announcement that has not closed, lapsed or been withdrawn; • permit short sales of arbitrage transactions. <p>The ASX may amend its operating rules to alter the short selling requirements, however, any such amendments would be subject to disallowance by the relevant Government Minister.</p>
Brazil	<p>Short sales are mostly unregulated in Brazil (cf. answer 2). Without the borrowing of the securities, a strict short sale may only happen in a private or OTC transaction. Exchange traded securities must be delivered at D+2 by exchange regulations, which implies the previous borrowing of the shorted securities. Such borrowing in general happens through the São Paulo Securities Bank – BTC, which is a division of the Brazilian Settlement and Custody Company – CBLC (a spin off of the São Paulo Stock Exchange) dedicated exclusively to the management of a voluntary securities lending system, including collateral calls and custody.</p>
Canada: Ontario	<p>There are no restrictions on who may conduct or the venues for execution of short sales, except the general rule that all trades must go through a registrant unless an OSA exemption is available, and the insider restrictions under the CBCA.</p> <p>To execute as short sale, it must be identified as a short sale at the time of order entry (unless it is “short exempt”) and the price must be at or above the last sale price.</p> <p>Dealers usually provide borrowed stock for settlement of transactions either out of their own inventories or by arranging for borrowed stock from another financial institution. If the short seller cannot maintain adequate margin, and the dealer wants to close the position, the seller may be “bought in” – the dealer will purchase the securities at prevailing rates.</p> <p>Exceptions to the price tick requirement: for program trades, registered traders (market makers), derivatives market makers, arbitrage accounts, first sales made ex-dividend, ex-rights or ex-distribution, or as a result of an order placed in a special non-continuous auction facility such as a call</p>

	<p>market. Generally, there will be exceptions where the seller is technically short but is either engaging in market neutral trading activity or where the last sale price is not indicative or not known.</p>
<p>Canada: Quebec</p>	<p>Québec Securities Act – Section 194:</p> <p>“No person may sell a security short without previously notifying the dealer responsible for carrying out the transaction.”</p> <p>National Instrument 23-101 Trading Rules</p> <p>National Instrument 23-101 “Trading Rules” does not comprise any specific restrictions relating to short selling. However, Canadian Securities Authorities are of the view that identical provisions are not necessarily appropriate for each type of market, marketplace or each type of security. Consequently, when a regulation services provider, exchange or quotation and trade reporting system applies for recognition, Canadian Securities Authorities review its proposed rules to determine if these provisions are included and whether the specific provisions are appropriate in the context of that market, marketplace or security. Short selling may thus be executed on all types of regulated market and not only on exchanges.</p> <p>Universal Market Integrity Rules:</p> <p>PART 3 – SHORT SELLING</p> <p>3.1.01 Restrictions on Short Selling</p> <p>(1) Except as otherwise provided, a Participant or Access Person shall not make a short sale of a security on a marketplace unless the price is at or above the last sale price.</p> <p>(2) A short sale of a security may be made on a marketplace at a price below the last sale price if the sale is:</p> <ul style="list-style-type: none"> (a) a Program Trade in accordance with Marketplace Rules; (b) made in furtherance of the applicable Market Maker Obligations in accordance with the Marketplace Rules; (c) for an arbitrage account and the seller knows or has reasonable grounds to believe that an offer enabling the seller to cover the sale is then available and the seller intends to accept such offer immediately; (d) for the account of a derivatives market maker and is made: <ul style="list-style-type: none"> (i) in accordance with the market making obligations of the seller in connection with the security or a related security, and (ii) to hedge a pre-existing position in the security or a related security; (e) the first sale of the security on any marketplace made on an ex-dividend, ex-rights or ex-distribution basis and the price of the sale is not less than the last sale price reduced by the cash value of the dividend, right or other distribution; or (f) the result of: <ul style="list-style-type: none"> (i) a Call Market Order,

- (ii) a Market-on-Close Order, or
- (iii) a Volume-Weighted Average Price Order.

Investment Dealers Association of Canada Regulation

REGULATION 2000

SEGREGATION REQUIREMENTS

Correction of Segregation Deficiencies

2000.9. In the event that a segregation deficiency exists, including (without limitation) deficiencies arising in the circumstances listed below, the Member shall expeditiously take the most appropriate action required to settle the segregation deficiency.

Call loans:

The Member shall take action to recall such securities within the business day following the determination of the deficiency.

Securities loans:

The Member shall call for the return of such securities from the borrower within the business day following the determination of the deficiency or shall borrow securities of the same issue to cover the deficiency and should such securities not have been received by the Member within five (5) business days following the determination of the deficiency, the Member shall undertake to buy-in the borrower.

Inventory or Trading Account Short Positions:

The Member shall borrow securities of the same issue to cover the deficiency within the business day following the determination of the deficiency or shall undertake to purchase the securities immediately.

Client Declared Short Sales:

The Member shall borrow securities of the same issue to cover the deficiency within the business day following the determination of the deficiency or shall undertake to buy-in the securities within five (5) business days.

Fails – Client, Members, Acceptable Institutions or Acceptable Counterparties:

If such securities have not been received by the Member within fifteen (15) business days of the settlement date, the Member shall borrow securities of the same issue to cover the deficiency or shall undertake to buy-in the securities.

Stock Dividends Receivable and Stock Splits:

If such securities have not been collected within forty-five (45) business days of the date receivable, the Member shall obtain a written confirmation of the position receivable. If such position remains unconfirmed after the aforementioned forty-five (45) business days, the Member must transfer the position to its difference account.

Difference Accounts:

Each Member shall maintain a difference or suspense account in which shall be recorded all securities which have not been received by reason of irreconcilable differences or errors in any accounts. If securities recorded in a difference account have not been obtained by the Member within thirty (30) business days of the deficiency being recorded, the Member shall borrow securities of the same class or series to cover the deficiency or shall undertake to purchase the securities immediately.

Bourse de Montréal Inc.

Rule 7 – Operations of members

7509- Segregation on a Timely Basis and Corrections to be Made

1) Frequency and review of Calculation

A member must determine at least twice weekly the securities required to be segregated.

Each member must review on a daily basis compliance with its segregation requirements for its clients' securities according to the latest determination of such securities with the view of identifying any deficiency in securities required to be segregated and correcting any such deficiency.

2) Correction of segregation Deficiencies

In the event that a segregation deficiency exists, including, without limitation, deficiencies arising in the circumstances listed below, the member must expeditiously take the most appropriate action required to settle the segregation deficiency.

a) Call Loans:

The member must take action to recall such securities within the business day following the determination of the deficiency.

b) Securities Loans:

The member must call for the return of such securities from the borrower within the business day following the determination of the deficiency or must borrow securities of the same issue to cover the deficiency and should such securities not have been received by the member within three (3) business days following the determination of the deficiency, the member must undertake to buy-in the borrower.

c) Inventory or Trading Account Short Positions:

The member must borrow securities of the same issue to cover the deficiency within the business day following the determination of the deficiency or shall undertake to purchase the securities immediately.

d) Client Declared Short Sales:

The member must borrow securities of the same issue to cover the deficiency within the business day following the determination of the deficiency or must undertake to buy-in the securities within three (3)

	<p>business days.</p> <p><i>e) Fails – Client, members, Acceptable Institutions or Acceptable Counterparties:</i></p> <p>If such securities have not been received by the member within fifteen (15) business days of the settlement date, the member must borrow securities of the same issue to cover the deficiency or must undertake to buy-in the securities.</p> <p><i>f) Stock Dividends Receivable and Stock Splits:</i></p> <p>If such securities have not been collected within forty-five (45) business days of the date receivable, the member must obtain a written confirmation of the position receivable. If such position remains unconfirmed after the aforementioned forty-five (45) business days, the member must transfer the position to its difference account.</p> <p><i>g) Difference Accounts:</i></p> <p>Each member must maintain a difference or suspense account in which shall be recorded all securities which have not been received by reason of irreconcilable differences or errors in any accounts. If securities recorded in a difference account have not been obtained by the member within thirty (30) business days of the deficiency being recorded, the member must borrow securities of the same class or series to cover the deficiency or must undertake to purchase the securities immediately.</p>
France	<p>Any investor may conduct short sales, provided the security borrowing requirement is met. Where the investor borrows the equity before shorting it, he is considered as the owner of the security at the time he enters the sale order and there is no specific provision applying to such transaction.</p> <p>DSOs may be conducted by any investor provided that:</p> <ul style="list-style-type: none"> • The broker accepts the order (a firm has discretion as to whether it wants to offer this specific service to clients); • The security traded in on the eligible list set up by Euronext Paris according to liquidity criteria.
Germany	<p>Even though short sales are not exclusively regulated in Germany on a statutory basis, regulations concerning securities lending transactions usually conducted in connection with short sales can be found in the Special Trading Conditions for Securities Lending of the Clearstream Banking Stock Corporation (Clearstream Banking AG) as well as in master agreements of banks for securities lending and loan transactions.</p> <p>According to the banks' general terms and conditions of business, the amount of interest and fees charged for the credits and services customary in private banking operations is specified in the banks' price schedules. Clients may also make separate agreements with the banks. The banks are entitled to have collateral furnished and in the event that the risks change may call for increased collateral. Such agreements are subject to civil law.</p> <p>In the case of a securities repurchase agreement, securities are sold at an agreed price (1st Purchase Contract) and the counterparty pays the</p>

	<p>purchase price. At the same time, the seller undertakes to buy back the securities on a certain date and at an agreed price (2nd Purchase Contract). A securities repurchase agreement is thus characterised by two inter-dependent purchase contracts. The price in the 2nd Purchase Contract (repurchase price) is regularly higher than the price in the 1st Purchase Contract as the buyer demands for the lending of the monetary amount an interest payment over the entire term of the repurchase agreement that corresponds to the money market interest rate minus the fee to be paid (loan fee), which is referred to as the repo rate. The amount of the fee depends on demand in the market for the corresponding security. The less the demand for a security, the nearer the repo rate is to the money market interest rate, and conversely.</p> <p>The short seller can redeem the securities loan by repurchasing the securities in the over the counter market, by drawings from his securities account as well as by way of a securities lending transaction or a securities repurchase agreement.</p> <p>In legal terms, the securities lending transaction is a non-cash loan as defined by Section § 607 BGB in which the lender assigns the securities to the borrower for a limited period of time. The borrower undertakes to return securities of the same type and amount and for the term of the loan must pay a fee. The borrower must provide adequate collateral in favour of the lender. Depository banks may also engage in short sales and securities lending transactions.</p> <p>Securities lending agreements are made (1) between depository banks, (2) between the central German securities clearing and depository bank (Deutsche Börse Clearing AG) and the banks maintaining accounts with it within the framework of an agency contract (Section 675 BGB). In addition (3), a securities account holder may mandate his depository bank to lend the securities held by it in safe custody in return for the normal fee. The depository bank then concludes a loan agreement with the borrower in its own name, but for the account of its customer. The bank then acts as agent of the securities account holder lending the securities. The agent acts in its own name, but for the account of its client (Section 383 German Commercial Code, HGB). In economic terms, an agent is only a middleman between supply and demand. He may pass on all risks and expenses to his clients (Sections, BGB, 396 Para. 2 HGB). In particular, the borrower's credit risk is borne not by the bank, but by its client (Section 667 BGB). The relationship between the depository bank and its securities-borrowing clients has the features of a loan agreement, which simplifies the furnishing of collateral and its pledging according to Section 12 Para. 1 of the German Safe Custody Act (Depotgesetz). An agreement on a commission basis is, however, also conceivable.</p> <p>Stock exchange transactions must be fulfilled within two days in Germany, hence short sales going beyond this period can only be fulfilled by way of securities lending or a repo (securities repurchase) transaction. In the case of securities lending, the seller (= borrower) delivers the securities lent him in order to fulfil his selling obligations and then purchases the securities at a later date to terminate the securities lending transaction.</p>
Hong Kong	Naked short selling on the Exchange is prohibited under the law.

	<p>However, there are exemptions for market makers when they conduct naked short sales in performing their market making obligations and when they short sell to hedge their market making positions.</p> <p>Covered short selling is permitted. There are some restrictions and conditions. These are as follows –</p> <ul style="list-style-type: none"> • Specific reporting and record keeping requirements for all short selling orders (under the law); • There is no restriction as to who may conduct covered short sales, but the short sale transactions must be concluded in securities designated by the SEHK through its trading system; (under the Rules of the SEHK - Please refer to answers 2 and 4 above) • The short sale of a designated security cannot be made below the best current offer price (i.e. the tick rule) (under the Rules of the SEHK); • Market makers of stock options, stock futures, Pilot Program securities and certain Exchange Traded Funds are exempt from the tick rule. The tick rule exemption also applies to (proprietary) index arbitrage transactions of exchange registered index arbitrageurs (under the Rules of the SEHK). <p>There are not specific laws or rules regarding arrangements for delivery of securities in respect of short sales. However, under the Rules of the Hong Kong Clearing Company Limited (HKSCC) if a seller is unable to settle a sale by the end of settlement date (T+2), then unless specific exemptions apply, HKSCC will commence mandatory buy-in procedures to settle the sale on T+3.</p> <p>The Rules of the SEHK provides the exchange with discretion to require exchange participants to liquidate any or all open short sold positions whether these positions are for the exchange participant’s own account or for a client account.</p>
Italy	<p>Short selling is allowed and everybody may conduct short sales without any restrictions. However, market participants executing trading activities for investors have to fulfil general rules of conduct. According to art 28 of Consob Resolution n. 11522, authorised intermediaries, before concluding contracts for asset management or investment advice service and starting to supply investment services or related non-core services, must ask investors for information about their experience in investing in financial instruments, financial situation, investment objectives and propensity to incur risks. Moreover “authorised intermediaries may not carry out or recommend transactions or supply management services until they have provided investors with adequate information on the nature, risks and implications of the transactions or service in question for the purpose of making informed investment or disinvestments decisions“. Art. 29 of the above mentioned Consob Resolution then specifies that “authorised intermediaries shall refrain from carrying out transactions on behalf of investors that are not suitable in terms of type, object, frequency or size. Authorised intermediaries shall take into account the information referred to in art. 28 and any other information available in relation to the services supplied. Where an authorised intermediary receives instructions</p>

	<p>from an investor relative to an unsuitable transaction, it shall inform the investor of the fact and state the reasons why it is not advisable to carry out the transaction”.</p>
<p>Japan</p>	<ul style="list-style-type: none"> • who may conduct short sales, Individual investors, Institutional investors, Securities firms(dealing) • the venues where short sales may be executed (e.g. only on an exchange), Securities exchanges, OTC markets • the way in which the sale may be executed; <ul style="list-style-type: none"> < Customers to Securities Companies > <ul style="list-style-type: none"> - A customer shall mark that its selling order is “short-selling”. He/she shall not place a short-selling order below the price at the last published sale on securities exchanges. He/she shall not place a short-selling order at or under the price at the last published sale when the stock price is falling. - A securities company shall confirm whether the selling order of a customer is short-selling or not. It shall not accept a short-selling order below the price at the last published sale on securities exchanges. It shall not accept a short-selling at or under the price at the last published sale when the stock price is falling. < Securities Companies to Securities Exchanges or OTC Market > <ul style="list-style-type: none"> - A securities company shall mark that its selling order is “short-selling”. It shall not execute a short-selling below under the price at the last published sale on securities exchanges. It shall not execute a short-selling at or under the price at the last published sale when the stock price is falling. • any arrangements for delivery in respect of short sales; T+3. It is the same as cash transactions • The closing out of the short position. <ul style="list-style-type: none"> - In the case of “short-selling on margin transaction”, the customer has to close out the short position <u>in six months by buying back or the delivery of the securities.</u> - In the case of “other short-selling”, there are no any regulation on the duration of the closing out the short position. <p>Please describe in your response any permitted exceptions to the generality of short selling rules, e.g. for market makers, for derivatives hedging etc.</p> <p><i>Exemptions of “the mark and confirm rule”</i></p> <ul style="list-style-type: none"> • Market making • Off-hour trading

	<ul style="list-style-type: none"> • Securities futures transactions (e.g. single stock futures) • Bonds except for convertible bonds and bonds with warrants • When-issued transactions • Short-sellings of purchased securities before settlements • Short-sellings of securities certain to return from borrowers • hedge sellings of stocks regarding warrant bonds or convertible bonds after exercising the rights to convert the bonds to the stocks • hedge sellings of the stocks after requesting to convert ETFs to stocks of the portfolio, or • short-sellings of the ETFs after applying to purchase <p><i>Exemptions of “the up-tick rule”</i></p> <ul style="list-style-type: none"> • Transactions mentioned above regarding exemptions of “mark and confirm rule” • Margin transactions, or margin transactions on own accounts of securities companies • Sellings stocks for arbitraging between stocks and stock index futures, options for individual stocks, or between ETFs and stock index futures • Sellings of the stocks to hedge the price risks of stock index futures, options for individual stocks, or ETFs • Sellings of ETFs to hedge the price risks of stock index futures • Odd lot stocks • Selling in connection with a price arbitrage between ETFs and stock indices • Selling in connection with a price arbitrage between domestic stock exchanges
Malaysia	<p>Prior to the prohibition of regulated short selling, only (broking) member companies of the stock exchange which have in place written guidelines on “Know Your Customer” practices approved by the exchange were permitted to engage in regulated short selling.</p> <p>Prior to its prohibition, regulated short selling could only be executed through the stock exchange’s automated trading system. Direct business transactions (ie, off-market trades) were not permitted.</p> <p>Prior to the prohibition of regulated short selling, every short sale had to be identified at the time the order was made. It was incumbent on the exchange member company to make the necessary enquiries about whether an order was a short sale.</p>

	<p>A securities borrowing arrangement would have had to be in place at the time of the short sale, ie, the exchange’s electronic system would not have been able to proceed with clearance of a “naked” short sale.</p> <p>The stockbroking member firm had to inform the exchange of all short sales regularly. The “zero tick” rule applied to every short sale (ie, at or above the last done price).</p> <p>A short sale could not to be made for 21 days immediately following a takeover announcement and was also not allowed if the security approved for regulated short-selling was declared as a “designated security” by the exchange (ie, when a seller of the stock must have in hand the shares and the buyer of the stock has to pay up in full up-front for the transaction).</p> <p>Prior to the prohibition of regulated short selling, the stock exchange’s delivery and settlement rules applied to regulated short sale in the same manner as they applied to normal sales. In the event of the a failure by the short seller to deliver securities within the exchange’s delivery and settlement rules, the exchange would automatically conduct a “buy-in” of shares against the stockbroking member company concerned without notice to cover the short sale.</p> <p>Prior to the prohibition of regulated short selling, before executing a regulated short sale, a member company had to ensure that its client had undertaken a prior arrangement with an authorised lender and borrower of securities to borrow the same category of short-sold securities through the execution of a Stock Borrowing and Lending Agreement.</p> <p>Please describe in your response any permitted exceptions to the generality of short selling rules, e.g. for market makers, for derivatives hedging etc.</p> <p>Prior to the prohibition of regulated short selling, the objective of allowing short selling was to facilitate derivative hedging. However, short sales were not necessarily restricted to that particular activity.</p>
Mexico	<p>Short sales can only be carried out with high and medium liquidity equity securities.</p> <p>Only authorized brokerage houses can conduct them. The authorization is granted by the CNBV.</p> <p>Short sales can only be executed on an authorised securities exchange.</p> <p>Brokerage houses can only perform short sales on behalf of their clients if it’s foreseen by the respective intermediation contract.</p> <p>Short sales can not be conducted neither at a lower price than that of the previous trade nor at the same price, except if such price is consequence of an up movement in the quotation.</p> <p>Short sales conducted by brokerage houses in order to hedge exposures on warrants are not subject to the price restriction described on the previous bullet.</p> <p>Short sales should comply with the rules set by the exchange on which they are carried out. Those rules include registration, execution, surveillance and information disclosed to the public.</p>

	<p>Brokerage houses have to inform daily to the respective exchange and to the CNBV, through electronic media, the detail of every short sale performed and the balance of short positions they have.</p>
Netherlands	<p>Short selling can be conducted by members of a regulated market (in the Netherland Euronext (Amsterdam) N.V.) and clients of securities institutions. Sales may be executed on an exchange and over the counter (off exchange). The rules for delivery are the same as those applicable to regular transactions (settlement = T+3). Euronext Amsterdam calculates the margin provisions for derivatives. Members who submit transactions that result in short positions have to comply with those provisions. For short selling stocks / certificates general rules for the relation securities institution / customer apply like the “know your customer” and “margin provisions” in the Further Regulations regarding conduct of business 2002 (hereafter FR2002).</p>
Singapore	<p>We do not have regulations or market rules governing short sales explicitly. Short sales are effected just like any normal market transactions. The SGX will initiate buying-in procedures if the short seller is unable to cover his naked short position on settlement date.</p>
Spain	<ul style="list-style-type: none"> • who may conduct short sales, Any investor, retail or institutional, can conduct short sales, as long as they are justified with purchases or loans after the precise moment of the sale but on the same trading day or with loans borrowed before the sales, as it was mentioned in questions 1 and 2. • the venues where short sales may be executed (e.g. only on an exchange), The short sales can be executed as an ordinary trade on the Spanish market. • the way in which the sale may be executed; The short sales are executed in the same way as the rest of the sales, there is no distinction between short sales and ordinary sales regarding the way they are traded on the Spanish market. • any arrangements for delivery in respect of short sales; There are no special arrangements for delivery in respect of short sales. It is important to point out that the moment of delivery is essential in order to identify short sales, given the features of the Spanish clearing and settlement system (see response to question 8). • The closing out of the short position. The closing out of the short position is carried out in the same way as any other ordinary sale on the market. <p>Please describe in your response any permitted exceptions to the generality of short selling rules, e.g. for market makers, for derivatives hedging etc.</p> <p>As it was said before, the SCLV will impose a fine when the short sales are justified with purchases or loans carried out after the selling date. That means that a fine will not be imposed if the purchases or loans are</p>

	<p>carried out after the sale but on the same day. That is, an investor could sell securities in the morning and buy or borrow in the afternoon, without being fined by the SCLV.</p> <p>In order to deliver the security to the purchaser, the short seller will borrow the security from a member of the settlement system of the respective market or from a broker-dealer or an institutional investor. The short seller will later close out the position by returning the security to the lender, typically by purchasing equivalent securities on the open market.</p> <p>In the Spanish equity market there are currently two systems to carry out security lending transactions:</p> <ul style="list-style-type: none"> • The so-called “centralised security loans” through the SCLV. It is a system with a built-in procedure for the automatic lending of equities by the members of the central depository having an account with it, and with the aim of delivering the securities to the purchase party on the settlement date when the delivery is not carried out by the seller. Lending participants place securities at the SCLV’s disposal which borrows them to cover sales pending of settlement. These loans are regulated by the Circular nº10/2001, of 26 November, of the SCLV. • Bilateral security lending is the transfer of shares for a fixed or open period, in return for a collateral as guarantee and a fee. This activity is basically carried out by institutional investors. Conditions of bilateral security loans are freely determined by the parties through a private contract, usually based on OSLA agreement. This kind of security loans must also be reported to the SCLV which exclusively registers those loans arranged between parties. The daily bulletins of the stock markets discloses information regarding the open position of bilateral loans in each listed security. The article 36.7 of the Spanish Securities Market Act 24/1998 provides regulation about bilateral stock lending regarding: a) minimum level of liquidity of stocks to be borrowed, b) register in the SCLV, c) maturity of the loan with a maximum length of one year, d) collateral eligibility, and, e) necessary margins. To develop the requirements included in the article 36.7, a rule is being drafted with the aim of considering these transactions a real loan and not a deal.
Sweden	No specific rules, unless previously mentioned.
Switzerland	<p>As to date there are no specific rules, everybody may conduct short sales without any restrictions. Irregularities, violations of law and misbehaviour by regulated broker dealers could be sanctioned based on the fit and proper requirement (see als cf. 13).</p> <p>So, short selling is allowed. Whilst executing trading activities, market participants (banks and/or securities dealers) have always to fulfill the requirements according to the Federal Law on Banks and Savings Banks (Banking Law, BankL) and the Federal Act on Stock Exchanges and Securities Trading (Stock Exchange Act : SESTA), e.g. the rules of conduct (Art. 11 SESTA) in connection with customer business.</p> <p>These rules of conduct according to Art. 11 SESTA (Federal Act on Stock Exchanges and Securities Trading, Stock Exchange Act) (a. duty of disclosure; b. duty of diligence; c. duty of loyalty) are further detailed</p>

	<p>and decreed in the “Code of Conduct for Securities Dealers governing securities transactions” of the Swiss Bankers Association. The Board of Directors of the Swiss Bankers Association established these guidelines in an effort to maintain and foster the good reputation and high standards of the Swiss securities trading business in Switzerland and abroad. Clients effecting securities transactions in Switzerland must be able to rely on receiving a professional, fair and transparent service. This Code of Conduct constitutes the professional ethics for all securities dealers subject to the Stock Exchange Act. It substantiates the duties of disclosure, due diligence and trust as set forth fundamentally in Art. 11 SESTA. This Code of Conduct obliges securities dealers to ensure efficient business organization, professional training and compliance rules appropriate to their corporate structure and activities. Moreover, securities dealers must disclose their services to the effect that their clients are able to assess adequately the rights and duties arising from securities transactions as well as special risks inherent in particular types of securities transactions. The Code of Conduct does not otherwise affect the legal relationship between securities dealers and their clients, which is governed by civil law (in particular the provisions of the Swiss Code of Obligations governing purchases, mandates and commissions) as well as the relevant terms of agreement between the securities dealers and their clients. The Code of Conduct is not applicable to securities transactions among securities dealers.</p> <p>Concerning the coverage of short positions, Art. 13: “Cover for short positions entered into by the securities dealer” of this Code of Conduct stipulates that “the securities dealer must fulfill any and all delivery obligations arising from proprietary trading exclusively from his/her own holdings. He/she may cover short positions by lending or borrowing securities. Subject to corresponding agreement with the client, the securities dealer may lend out securities from client holdings”.</p>
UK	<p>The UK places no restrictions on who may conduct short sales, or on where and how they may be conducted. Those who conduct or arrange short sales will, where relevant, need to ensure that they are able to comply with exchange and/or clearing house rules for delivery.</p>
US: SEC	<p>Please see responses to Questions #2 and 3.</p> <p>Please describe in your response any permitted exceptions to the generality of short selling rules, e.g. for market makers, for derivatives hedging etc.</p> <p>There are certain exceptions from Commission Rule 10a-1 for activities that are deemed not to present the abuses which the rule is designed to prevent. These include (but are not limited to) certain sales to fill orders to buy in an amount less than a round lot; sales by registered specialists, exchange market makers or third market makers effected at a price equal to the last sale reported for a security; sales effected for limited domestic arbitrage or international arbitrage activities; sales by underwriters participating in a distribution in connection with an overallotment of securities; sales by certain broker/dealers engaging in block positioning activities.</p> <p>NASD Rule 3350 incorporates the exceptions in Rule 10a-1, and includes</p>

	<p>several other exceptions, including for sales by qualified market makers registered in the security on Nasdaq in connection with bona fide market making activity, sales effected by members for the account of a registered options market maker in order to hedge existing offsetting options positions created in a transaction contemporaneous with the short sale, and sales effected by members for the accounts of registered warrant makers if the short sale results in a fully hedged position.</p>
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8.	<p>Please describe the rules and processes which provide for:</p> <ul style="list-style-type: none"> • the initial identification of a short sale; • (if separate) the recording of short sales; • the reporting of short sales to a market centre and/or a regulatory authority.
Australia	<p>In relation to the exception that allows short selling in circumstances where arrangements are made before the sale that will enable delivery to the buyer within T+3 and the sale is made on a steady or rising market the Act requires:</p> <ul style="list-style-type: none"> • the selling client to inform the dealer, and • the market operator to be informed; that the sale is short. <p>The operating rules of the ASX require:</p> <ul style="list-style-type: none"> • a trading participant to advise ASX of its net short sale position daily by using a parameter attached to the order entry. • short sellers trading through licensed dealers to inform the dealer that the trade is short; • a trading participant to advise ASX of all short sales of public securities that have not been closed out.
Brazil	N.A.
Canada: Ontario	<ul style="list-style-type: none"> • the initial identification of a short sale; OSA section 48 – seller must inform dealer. Otherwise is implied by the recording and reporting rules. • (if separate) the recording of short sales; Section 6.2 of the UMIRs requires that each order entered on a marketplace must contain a designation if the order is a short sale (and if it is not designated, and would become short upon execution, the order must be modified and the designation added). Section 11.2 of NI 23-101 requires that intermediaries record information relating to an order immediately upon receipt of that order that includes whether it is a short sale order. Section 11.2 of NI 21-101 imposes a requirement that marketplaces keep records of each order (including whether it is a short sale order). • the reporting of short sales to a market centre and/or a regulatory authority. Under section 11.2 of NI 23-101 the audit trail requirements must be transmitted to a regulation services provider (currently RS Inc.) in the form required by that entity and after December 31, 2003 it will have to be done electronically. In section 10.11 of the UMIRs, the order information must be transmitted to a market regulator. Section 10.10

	requires dealers or ATS subscribers to file a short position report twice a month with a market regulator (reflecting the aggregate short position of each individual account in respect of each security).
Canada: Quebec	<p>Québec Securities Act:</p> <p>Section 194 - Short sales</p> <p>No person may sell a security short without previously notifying the dealer responsible for carrying out the transaction.</p> <p>Québec Regulation:</p> <p>Section 222 - Regulation Concerning Securities</p> <p>The accounting books and registers that a dealer with its head office in Québec must keep include:</p> <p>(1) a register for primary registration in which are entered in chronological order purchases and sales of securities allocated according to the markets on which the transactions were effected, securities received and delivered, cash receipts and disbursements;</p> <p>(2) a customers' ledger in which, for each separate account, are entered the buy and sell transactions, the securities received and delivered, and all the other transactions entered as debits or credits in the account;</p> <p>(3) the books in which are entered:</p> <ul style="list-style-type: none"> (a) the securities being transferred; (b) dividends and interest received; (c) securities borrowed or loaned; (d) sums borrowed or loaned, with identification of the security attached; (e) securities not received or not delivered by settlement date; (f) long and short positions for each security, both in customers' accounts and in those of the registered person, with identification of the account and the place in which the securities are kept or the position taken in compensation for the securities sold short; <p>(4) a register of buy and sell orders and the related instructions, in which are entered:</p> <ul style="list-style-type: none"> (a) the description of the order; (b) the account to which it refers; (c) the name of the person who placed the order, where it is not the same as that in paragraph (b); (d) the date and the time of the order; (e) where applicable, the fact that the order was placed under a management contract; (f) the price at which the order was executed; (g) the date;

- (5) a register containing the copies of the confirmation slips and the statements sent to customers;
- (6) a file for each customer containing:
 - (a) the name and address of the account holder and, where applicable, of his guarantor;
 - (b) any proxy by which the account holder grants to another person power to place orders for him, with the address of that person;
 - (c) in the case of a joint account or an account opened in the name of a company, the name and address of the person authorized to place orders, with the document granting him such power;
 - (d) where appropriate, a contract for a margin account, signed by the holder of the account, and, where applicable, by his guarantor;
 - (e) the opening account form and its updates;
 - (f) the document required at the time of the opening of an account by a dealer authorized to act as a financial planner;
 - (g) the form "Declaration of Funds" used for important cash transactions;
- (7) a register in which are entered the options bought, sold or underwritten by the dealer, with the value and number of the securities to which those options refer;
- (8) books and registers showing in detail all the assets and liabilities, proceeds and expenses as well as capital;
- (9) a monthly trial balance and a monthly computation of the risk adjusted capital or net free capital;
- (10) a register in which are entered details of the daily Commissions of the representatives.
- (11) a register of Commission sharing where the following information is recorded with respect to each share: the identity of those sharing the Commission with their address and industry segment, the object and date of the transaction, the identity of the persons who are parties thereto, the percentage of the Commission or its amount and the way it is allocated between those sharing it.

National Instrument 21-101 Marketplace Operation

PART 11 - RECORDKEEPING REQUIREMENTS FOR MARKETPLACES

11.2 Other Records

- (c) a record of each order which shall include:
 - (i) the order identifier assigned to the order by the marketplace,
 - (ii) the marketplace participant identifier assigned to the marketplace participant transmitting the order,
 - (iii) the identifier assigned to the marketplace where the order is received or originated,

- (iv) the type, issuer, class, series and symbol of the security,
- (v) the number of securities to which the order applies,
- (vi) the strike date and strike price, if applicable,
- (vii) whether the order is a buy or sell order,
- (viii) whether the order is a short sale order, if applicable,
- (ix) whether the order is a market order, limit order or other type of order, and if the order is not a market order, the price at which the order is to trade,
- (x) the date and time the order is first originated or received by the marketplace,
- (xi) whether the account is a retail, wholesale, employee, proprietary or any other type of account,
- (xii) the client account number or client identifier,
- (xiii) the date and time the order expires,
- (xiv) whether the order is an intentional cross,
- (xv) whether the order is a jitney and if so, the identifier of the underlying broker,
- (xvi) if the order is varied, corrected or cancelled, the date and time the order was varied, corrected or cancelled and whether the order was varied, corrected or cancelled on the instructions of the client or the dealer and if varied or corrected, any of the information required by this subsection that has been varied or corrected,
- (xvii) the currency of the order,
- (xviii) any client instructions or consents respecting the handling or trading of the order; and

National Instrument 23-101 Trading Rules

PART 11 - AUDIT TRAIL REQUIREMENTS

11.2 Audit Trail Requirements for Dealers and Inter-Dealer Bond Brokers

(1) Recording Requirements for Receipt or Origination of an Order – Immediately following the receipt or origination of an order for securities, a dealer and inter-dealer bond broker shall record specific information relating to that order including,

- (a) the order identifier;
- (b) the dealer or inter-dealer bond broker identifier;
- (c) the type, issuer, class, series and symbol of the security;
- (d) the face amount or unit price of the order, if applicable;
- (e) the number of securities to which the order applies;

- (f) the strike date and strike price, if applicable;
- (g) whether the order is a buy or sell order;
- (h) whether the order is a **short sale order**, if applicable;
- (i) whether the order is a market order, limit order or other type of order, and if the order is not a market order, the price at which the order is to trade;
- (j) the date and time the order is first originated or received by the dealer or inter-dealer bond broker;
- (k) whether the account is a retail, wholesale, employee, proprietary or any other type of account;
- (l) the client account number or client identifier;
- (m) the date and time that the order expires;
- (n) whether the order is an intentional cross;
- (o) whether the order is a jitney and if so, the underlying broker identifier;
- (p) any client instructions or consents respecting the handling or trading of the order, if applicable; and
- (q) the currency of the order.

Universal Market Integrity Rules:

PART 6 – ORDER ENTRY AND EXPOSURE

6.2 Designations and Identifiers

- (1) Each order entered on a marketplace shall contain:
 - (a) the identifier of:
 - (i) the Participant or Access Person entering the order as assigned to the Participant or Access Person in accordance with Rule 10.15,
 - (ii) the marketplace on which the order is entered as assigned to the marketplace in accordance with Rule 10.15, and
 - (iii) the Participant for or on behalf of whom the order is entered, if the order is a jitney order; and
 - (b) a designation acceptable to the Market Regulator for the marketplace on which the order is entered, if the order is:
 - (i) a Call Market Order,
 - (ii) an Opening Order,
 - (iii) a Market-on-Close Order,
 - (iv) a Special Terms Order,
 - (v) a Volume-Weighted Average Price Order,
 - (vi) part of a Program Trade,
 - (vii) part of an intentional cross or internal cross,

	<ul style="list-style-type: none"> (viii) a short sale which is subject to the price restriction under subsection (1) of Rule 3.1, (ix) a short sale which is exempt from the price restriction on a short sale in accordance with subsection (2) of Rule 3.1, (x) a non-client order, (xi) a principal order, (xii) a jitney order, (xiii) for the account of a derivatives market maker, (xiv) for the account of a person who is an insider of the issuer of the security which is the subject of the order, (xv) for the account of a person who is a significant shareholder of the issuer of the security which is the subject of the order, or (xvi) of a type for which the Market Regulator may from time to time require a specific or particular designation. <p>(1) If the order entered on a marketplace is a Special Terms Order, the order shall contain, in addition to all designations and identifiers required by subsection (1), information in such form as is acceptable to the Market Regulator of the marketplace on which the order is entered respecting:</p> <ul style="list-style-type: none"> (a) any condition on the execution of the order; and (b) the settlement date. <p>(2) If following the entry of an order on a marketplace for the sale of security that has not been designated as a short sale such order would become a short sale on execution, the order shall be modified to include the short sale designation required by subsection (1).</p> <p>(3) Each order entered on a marketplace including all designations and identifiers required by subsection (1) shall be disclosed to each Market Regulator.</p> <p>(4) The marketplace on which the order is entered shall determine if the identifier of the Participant or the marketplace shall be displayed in a consolidated market display.</p> <p>(5) Unless otherwise permitted or directed by the Market Regulator, a marketplace shall:</p> <ul style="list-style-type: none"> (a) disclose for display in a consolidated market display any designation attached to an order that is required by subclause (i) to (vii) inclusive of clause (1)(b); and (b) not disclose for display in a consolidated market display any designation attached to an order that is required by subclause (viii) to (xvi) inclusive of clause
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	<p>(1)(b).</p> <p>PART 10 – COMPLIANCE</p> <p>10.10 Report of Short Positions</p> <p>(1) A Participant shall calculate, as of 15th day and as of the last day of each calendar month, the aggregate short position of each individual account in respect of each listed security and quoted security.</p> <p>(2) Unless a Participant maintains the account in which an Access Person has the short position in respect of a listed security or quoted security, the Access Person shall calculate, as of the 15th day and as of the last day of each calendar month, the aggregate short position of the Access Person in respect of each listed security and quoted security.</p> <p>(3) Unless otherwise provided, each Participant and Access Person required to file a report in accordance with subsection (1) or (2) shall file a report of the calculation with a Market Regulator in such form as may be required by the Market Regulator not later than two trading days following the date on which the calculation is to be made.</p> <ul style="list-style-type: none"> • <p>Investment Dealers Association of Canada Regulation and Bourse de Montréal Inc. Regulation</p> <p>JOINT REGULATORY FINANCIAL QUESTIONNAIRE AND REPORT</p> <ul style="list-style-type: none"> • Annually, members of the Investment Dealers Association of Canada and of the <i>Bourse de Montréal Inc.</i> must file a detailed Joint Regulatory Financial Questionnaire and Report which comprises short position information. • The following schedules comprise short position information: <p>SCHEDULE 2 - ANALYSIS OF SECURITIES OWNED AND SOLD SHORT AT MARKET VALUE</p> <p>SCHEDULE 4- ANALYSIS OF CLIENTS' TRADING ACCOUNTS LONG AND SHORT</p> <p>SCHEDULE 9 – CONCENTRATION OF SECURITIES</p> <p>The purpose of Schedule 9 is to disclose the largest ten issuer positions that are being relied upon for loan value whether or not a concentration charge applies.</p>
France	DSOs are identified by the investor’s broker but are not identified as such by the market. Other short sales are not identified as such on the market.
Germany	There are no rules or processes for initial identification or recording of short sales. Furthermore, there are no specific reporting requirements concerning short sales. Pursuant to Section 9 WpHG, however, credit institutions and financial services institutions shall be obliged to notify the BAWe of any transaction in securities or derivatives if the transaction is concluded in connection with a securities service or for own account. According to this reporting requirement it is not necessary to state whether

	<p>the respective transaction was conducted by short selling.</p> <p>In the Fourth Financial Markets Promotion Act an amendment to Section 9 WpHG shall be inserted according to which the credit institutions and financial services institutions are obliged to notify whether a transaction was conducted by short selling, provided that the short sale exceeds the amount of two million euros.</p>
Hong Kong	<p>Section 80B of the Securities Ordinance requires (covered) short sellers to inform their agents that the order is a (covered) short sale. Section 80C of the Securities Ordinance requires SEHK participants to input such orders as short sales in accordance with SEHK Rules. These requirements enable short sales to be identified at the origin of an order. (Records kept under these requirements are to be kept for 12 months and made available to the Commission upon request.)</p> <p>The Rules of the SEHK require exchange participants to indicate a short selling order as a short sale when inputting it into the trading system. This requirement enables the identification of short sales when the orders are inputted into the trading system. These records are reviewed by the SEHK and are made available to the Commission daily.</p> <p>The above requirements will enable short selling orders and transactions to be traced from execution backwards to the origin of the order.</p> <p>In addition to the above, the Code of Conduct requires registrants to keep proper records of all short selling transactions on its own account and for the account of its clients and such records should be kept for a period of not less than 7 years and made available for the Commission's inspection.</p>
Italy	n.a
Japan	<p>the initial identification of a short sale;</p> <p>A customer shall mark that its selling order is "short-selling". A securities company shall confirm whether the selling order of a customer is short-selling or not.</p> <p>(if separate) the recording of short sales;</p> <p>If a securities company accept a short-selling order, it shall write down "the short-selling" in the order ticket.</p> <p>the reporting of short sales to a market centre and/or a regulatory authority.</p> <p>A securities company shall mark that its selling order is "short-selling" to securities exchanges or OTC market.</p>
Malaysia	<p>the initial identification of a short sale;</p> <p>Prior to the prohibition of regulated short selling, the stockbroking member firm had to stipulate the status of the trade as a regulated short sale on the contract note it issued to the seller, after having been duly enquired over the nature of the trade (see question 7, third bullet.)</p> <p>(if separate) the recording of short sales;</p>

	<p>Not applicable.</p> <p>the reporting of short sales to a market centre and/or a regulatory authority.</p> <p>Prior to the prohibition of regulated short selling, members were required to comply with the Kuala Lumpur Stock Exchange (KLSE) reporting requirements for transactions that were carried out. The exchange then provided the information, in aggregate, to the market.</p>
Mexico	[Not answered]
Netherlands	<p>the initial identification of a short sale;</p> <p>The initial identification of a short sale is not regulated separately in the Netherlands. General rules apply.</p> <p>(if separate) the recording of short sales;</p> <p>With respect to the recording of any transaction the Euronext harmonized rulebook states under section 4501/ 2: “Members shall have adequate procedures for recording telephone conversations pertaining to the reception, execution or confirmation of orders on a medium that allows subsequent verbatim reproduction of such conversations. Any such recording shall be maintained for a period of six months for possible inspection by Euronext Amsterdam”.</p> <p>the reporting of short sales to a market centre and/or a regulatory authority.</p> <p>Euronext Amsterdam N.V., as a recognised exchange, has laid down¹⁴ reporting requirements on its Members with respect to short positions in securities that were admitted to trading by Euronext Amsterdam. Outstanding short positions that propriety traders (locals) have must also be reported by their clearingmembers. In addition, short positions are a part of the monthly financial statements all financial firms must submit (under the Capital Adequacy Directive) to the Dutch Central Bank (DNB).</p>
Singapore	Not applicable
Spain	<p>The only way that the CNMV has to identify the short sales is through the information provided by the SCLV. So, in that sense, there is no initial identification of a short sale nor separate recording of short sales.</p> <p>The SCLV keeps a historical register of operations and account entries. All the operations are always numbered with 15 digits. When, as a result of a purchase or other type of change in ownership, securities are attributed to new holders, or at the moment of the initial registration of the issue, the operation number constitutes what is called Register Reference (RR). This RR number provides information about the date of the purchase or the loan. So, with the information of this RR number, the SCLV could identify those sales that have been justified with purchases or loans carried out on a later date.</p>

¹⁴ Euronext Amsterdam Rulebook, section A-2407

	<p>The SCLV communicates, on a daily basis, to the CNMV the fines imposed to the participants of the SCLV, remarking the fines for short sales. Besides, the CNMV, in the habitual performance of its supervision activity, can request information about the Register References in order to identify short sales.</p>
Sweden	<p>Stockholmsbörsen (the Stockholm Stock Exchange) have rules regarding reporting of short sales. Stockolmsbörsen’s rules state that the members of the exchange shall report, on a weekly basis, the short sales that is conducted in the stocks that is listed on the A-list, within the segment with the stocks that has the highest turnover (the larger companies are listed on the A-List and one segment within the A-list is called the highest turnover). A list of the total amount of stocks that’s lended and the changes during the week is published, also on a weekly basis, on Stockolmsbörsen’s website (www.stockholmborsen.se). The information is only in Swedish.. This information is made public by Stockholmsbörsen on Monday before 10.00 a.m. The individual members are not identified.</p>
Switzerland	n.a.
UK	<p>The UK places no restrictions on who may conduct short sales, or on where and how they may be conducted. Those who conduct or arrange short sales will, where relevant, need to ensure that they are able to comply with exchange and/or clearing house rules for delivery.</p>
US: SEC	<p>Subsection (c) and (d) of Rule 10a-1 require broker/dealers effecting sell orders for exchange-listed securities to mark such orders “long” or “short.” The SROs incorporate the 10a-1 marking requirements and include an additional requirement that any short sale effected in reliance on an exemption from short sale regulation be marked “short exempt.” See, e.g., NYSE Rule 440B.20.</p> <p>All transactions, including short sales, must be reported to the market authority of which the executing broker-dealer is a member. Short sale transactions publicly reported and disseminated to the market are not marked as such, however short sale transactions reported for regulatory purposes are marked for identification.</p>

9.	<p>Please describe any arrangements for making information relating to short sales public. This covers the dissemination of any information, whether in respect of individual transactions or consolidated transaction/open position data. Please make clear whether the arrangement is mandated by a market authority (or undertaken voluntarily by an exchange), what is published, by whom, when (in relation to the timing of the sales) and who may access the data.</p>
Australia	<p>The ASX voluntarily publishes daily an aggregated net short position on a stock by stock basis. This data is currently provided on the following day and is publicly available on line from ASX Online, ASX.com, the ASX trading platform known as SEATS (Stock Exchange Automated Trading System) and also from information vendors.</p>
Brazil	<p>Short sales are not disclosed/recorded as such. On the other hand, CVM Instruction 249/96, article 6, obliges the disclosure on an aggregate level of all securities lending taking place through the BTC (cf. Answer 7) at D+1. The São Paulo Stock Exchange publishes this data on its daily bulletin and on the Internet.</p>
Canada: Ontario	<p>A Top 20 Largest Consolidated Short Position Report is available twice a month on the exchanges' website.</p>
Canada: Quebec	<p>Canadian stock exchanges (Toronto Stock Exchange and Canadian Venture Exchange) voluntarily undertook to disseminate to the public information related to short sales. The information consists of a report of the top 20 largest consolidated short position. The short sales reporting requirements are part of the Universal Market Integrity Rules, see answer to question #8.</p>
France	<p>Questions 8 and 9 are only relevant for DSOs. DSOs are not identified as such on the market. However, a market member must at all times be in a position to inform Euronext of his net position in each financial instrument corresponding to the execution of a DSO.</p>
Germany	<p>There are no arrangements dealing exclusively with the publication of information about short sales.</p>
Hong Kong	<p>The SEHK publishes a daily short selling trading summary through an information vendor, on its website and the press, i.e., the information is publicly available. The summary provides information on the short selling volume and turnover of each Designated Security and the daily total turnover in value and shares. The publication of trading information by the SEHK is provided in the <u>constitutive documents</u> of the SEHK (which are subject to the approval of the Commission).</p> <p>The information published by the SEHK provides consolidated information of the short selling turnover but not short selling information in respect of an individual or broker. However, where the Commission needs to know details of short selling orders or transactions, e.g., in respect of the identity of the person placing the order, beneficial owner of</p>

	a trade etc., the Commission has powers to require this information under the law ¹⁵ . Information obtained by the Commission under these circumstances is subject to the secrecy provisions ¹⁶ , i.e., in general, it cannot be made publicly available.
Italy	No rules to date concerning a reporting duty and the consequent dissemination of the information to the market. See answer to question 5
Japan	<p>Stock exchanges and JSDA discloses monthly trading values of short-sellings on each markets from this April and data for a certain month will be announced on the 20th of the following month, however the total balance of short selling is not disclosed. Also they disclose the balance of short-sellings on margin transactions.</p> <ul style="list-style-type: none"> • On every Tuesdays, stock exchanges and JSDA disclose the total balance of each stock markets at the end of the previous week of short-selling on margin transactions, etc. • On every Tuesdays, stock exchanges and JSDA disclose the balance of each issues at the end of the previous week of short-selling on margin transactions, etc. • On a daily basis, stock exchanges and JSDA disclose the balance of “daily-publicized stocks” at the previous day of short-selling on margin transactions in order to inform investors of excessive margin transaction activities of such issues, etc.
Malaysia	Prior to the prohibition of regulated short selling, stockbroking companies were required under the rules of the exchange to give the exchange daily information on short selling activity. Specifically, exchange members needed to submit a daily short selling position report to the exchange no later than 6.00pm each trading day on short sales undertaken during that day. The exchange would verify information contained in the report during the following trading day and produce the total net short sale position in the market, which it would then disseminate to the market at the end of that trading day. The open position of each stock would be displayed on, among other places, electronic trading/market information terminals.
Mexico	The Mexican Stock Exchange (BMV) publishes on a daily bulletin, which is available to anyone who subscribes to it, for every security the aggregate value of all the short sales conducted through the exchange the previous session.
Netherlands	Euronext Amsterdam publishes every two weeks an overview of Baisse Positions with respect to Euronext Amsterdam listed stocks / certificated in the OPC (Officiële Prijscourant) (see question 8). Euronext

¹⁵ Section 31 of the Securities and Futures Commission Ordinance. This section provides the Commission with powers for surveillance and its exercise is not dependant on any suspicion of malpractice. In addition, the Client Identity Rules (in the Code of Conduct) require all registrants to ascertain the identity of the ultimate beneficial owners of transactions.

¹⁶ Section 59 of the Securities and Futures Commission Ordinance.

	Amsterdam (their predecessor) decided to start the reportings and publications on December 5, 1990, the Dutch Supervisory Authorities, NAFM and DNB may decide to use the Baisse reportage, in combination with other incidental signals in their supervision. The OPC is made public.
Singapore	Not applicable
Spain	The information of the SCLV about short sales is not public.
Sweden	See para 8.
Switzerland.	No rules to date; we could imagine to introduce a reporting duty related to short sales resp. to securities borrowing resulting from short sales in order to collect respective transaction data and to make consolidated information public on a regular basis (daily, weekly or monthly)
UK	There are no general provisions in the UK for making publicly available information relating to short sales. However, the London Stock Exchange offers a facility in the case of substantial secondary offers to collate and publish (daily) an estimate of the short position in a security (approximate 'pent-up demand') in the days between the announcement of the secondary offer and its pricing. Although regarded as useful, the facility, introduced in the mid 1990s is only rarely requested by issuers/offerors.
US: SEC	<p>The SROs, including the NYSE, the NASD, and the American Stock Exchange ("Amex") have rules requiring members to report once a month aggregate short positions in all customer and proprietary accounts in securities listed on such exchanges or traded on Nasdaq. This information is publicly available on a number of different sources, including Barrons, the Wall Street Journal, and some financial websites. Short interest is the number of open short positions, <i>i.e.</i>, stocks that have been loaned to a short seller (who sells and delivers the borrowed shares) but not yet returned to the lender.</p> <p>Furthermore, mutual funds and other registered investment companies are required to disclose their short sale activity in their financial statements that accompany their annual reports and semi-annual reports. For example, mutual funds and closed-end funds must provide a Schedule of Securities Sold Short along with their financial statements which specifically lists the securities sold short during the relevant reporting period. This schedule will disclose the following information about a fund's short positions:</p> <ul style="list-style-type: none"> • Name of issuer and title of issue - each issue shall be listed separately • Balance of short position at close of period (number of shares) • Value of each open short position. <p>In addition, all investment companies (<i>e.g.</i>, mutual funds, closed-end funds, UITs) must disclose: (a) the amount held by others in connection with short sales, in the asset section of the balance sheet (<i>see</i> Rule 6-04 of Regulation S-X); (b) the amount payable for securities sold short in the liability section of the balance sheet (<i>see id.</i>); and (c) the gain or loss on closed short positions in securities in the statement of operations (<i>see</i></p>

	Rule 6.07 of Regulation S-X).
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10.	Please describe briefly the main disclosure/ publication requirements in your jurisdiction relating to ‘long’ positions. (Some argue that there should be equivalence of disclosure between long and short positions.)
Australia	<p>The Act requires a person to advise a listed company or listed managed investment scheme if the person begins to have, or ceases to have, a substantial holding (5% or more) in the company or scheme; or for a person with an existing substantial holding if there is a movement of at least 1% of the holding; or if a person is making a takeover bid of the company or scheme.</p> <p>The Act requires that this information also be given to the market operator.</p> <p>The Act has additional rules that apply to the holding of shares in the ASX (or other market licensees). The Act provides that an unacceptable control situation will exist if a person holds more than 15% of the voting power in the body.</p>
Brazil	N.A.
Canada: Ontario	The above-mentioned audit trail requirements apply to disclosure of all orders to a market regulator. With respect to disclosure of long positions, there are “early warning” requirements in the OSA that require filing of a news release immediately and a report within two days (to the OSC) of holdings of voting or equity securities of a reporting issuer over 10% and any 2% increases thereafter. At 20%, the investor generally becomes a “controlling” shareholder and would trigger take-over bid rules if any further purchases were made. There are also insider reporting obligations within 10 days of becoming an insider for the partners, directors, officers etc. of a reporting issuer as well as those deemed to be an insider by virtue of holding over 10%.
Canada: Quebec	<p>There is disclosure/publication requirements in Québec relating to ‘long’ positions. As a result of these requirements, insiders of a reporting issuer are subject to the disclosure requirements established in the Québec <i>Securities Act</i> and the Québec Regulation. In the context of these requirements, insiders are composed of the issuer itself, its subsidiaries, its senior executives and the senior executives of its subsidiaries and any person who exercises control over more than 10% of a class of shares of a reporting issuer to which are attached voting rights or an unlimited right to a share of the profits and in its assets in case of winding-up, other than securities that were the object of a firm underwriting and are being distributed and the senior executives of the aforementioned person who exercises control over more than 10%.</p> <p>The insider of a reporting issuer must report, within ten days of the event, any change in his holding</p>
France	Large shareholders disclosure requirements (See European Directive and Company Law).
Germany	There are no special disclosure/publication requirements relating to long positions. However, pursuant to Section 11 para. (2) BörsG offers, the

	<p>acceptance of offers as well as the spread that has been determined between bids and offers must be made accessible to all trading participants. The trading participants shall be informed promptly about the exchange price and the respective turnover.</p> <p>As already mentioned under question 8, credit institutions and financial services institutions shall be obliged to notify the BAWe of any transaction in securities or derivatives if the transaction is concluded in connection with a securities service or for own account. This requirement does not include an obligation to give specific information about short sales.</p>
Hong Kong	The turnover of securities, in number of shares and dollar value, are published daily by the SEHK. But there are no disclosure or other requirements for long positions.
Italy	n.a.
Japan	<ul style="list-style-type: none"> • Stock exchanges and Japan Securities Dealers Association (JSDA) disclose the balance of long position on margin transactions. • On every Tuesdays, Stock Exchanges and JSDA disclose the total balance of each stock markets at the end of the previous week of long position on margin transactions • On every Tuesdays, stock exchanges and JSDA disclose the balance of each issues at the end of the previous week of long position on margin transactions. • Every day, stock exchanges and JSDA disclose the balance of “daily-publicized stocks” at the previous day of long position on margin transactions in order to inform investors of excessive margin transaction activities of such issues.
Malaysia	All short sales would have had to have an equivalent “long” position, in the form of borrowed security. The trading system did not allow a “naked” short sale to be cleared. However, while member stockbroking companies needed to disclose short selling information to the exchange every day (see question 9 above), authorised securities lending agents were only required to report on their lending and borrowing activity to the stock exchange once a month (see question 11 below).
Mexico	Regulation issued by the CNBV requires all the equity issuers to disclose the names of all the persons with holdings of 5% or more in the company in the annual report. Those persons and the directors and high executives have to inform the CNBV of purchases or sales that jointly exceed approximately US\$300,000 in three months, if they buy or sell that amount of money in a period of five days or less, they have to inform it immediately to the CNBV after the last trade is executed.
Netherlands	In the Netherlands there are no disclosure / publication requirements relating to long positions.
Singapore	As in the case of short positions, we do not have specific reporting requirements for long positions.
Spain	As regards disclosure requirements about long positions, the Spanish

	<p>jurisdiction establishes some requirements relating to the communication of significant shareholdings. So, the article 53 of the Securities Market Act provides that any person who acquires or transfers, either personally or through an intermediary, shares of a company listed on any Stock Exchange, if the percentage of subscribed capital remaining in his possession after said transaction reaches or exceeds the percentage of 5%, shall report to the company affected, to the Stock Exchanges on which its shares are traded and to the CNMV. Such information is public.</p>
Sweden	<p>It is mandatory for insiders to report their holdings of equities and equities-related financial instruments in the company in which they hold an insider position. They report their holdings, and changes in holdings, to Finansinspektionen, which have a public register with this information.</p>
Switz.	<p>The disclosure of “long” positions is regulated in several respects: e.g. in the financial statements (a) the issuer itself has to disclose its major participations, (b) as well as the ones of its directors; general disclosure of shareholdings is furthermore required when specific thresholds are exceeded. We do not see an equivalence as the aims of the disclosure requirements for “long” positions are different from the ones for short sales.</p>
UK	<p>The essence of the UK disclosure provisions is that the holder of a legal or beneficial interest in a listed UK company is required to disclose (to the company) interests of 3% of any class of securities. This includes both the current ownership of those securities (including borrowed securities, except where part of a non-discretionary collateral package) and options or other entitlements to acquire those securities. Disclosure is required in the first instance under the provisions of the Companies Act, which requires investor disclosures to enable management to be aware of potentially significant shareholder interests.</p> <p>The requirement on a company to make these disclosures public flows from the UK listing rules. Although the legislation contains an exemption (as provided for in the EU Major Shareholdings Directive) for market intermediaries, the London Stock Exchange requires all registered intermediaries to declare all interests above 3% in FTSE 100 companies, above 5% in FTSE 250 companies, and in excess of 10% in respect of all other companies.</p>
US:SEC	<p>Sections 13(d) and (g) of the Exchange Act generally require the reporting of information with respect to long positions relevant to corporate control and its transfer. The rules implementing these sections are set forth in Regulation 13D-G, which establishes specific filing and disclosure requirements, and provides standards for determining what constitutes an “acquisition” and “beneficial ownership” for purposes of these provisions. Any person who, directly or indirectly, acquires beneficial ownership of more than 5% of a class of equity security registered pursuant to Section 12 of the Exchange Act is generally required by Rule 13d-1 to file a statement containing the information required by either Schedule 13D or 13G depending on whether such person is subject to paragraph (a), (b), or (c) of Rule 13d-1. Under paragraph (a) of Rule 13d-1, a person who makes an acquisition of covered equity securities that results in that person becoming the beneficial owner of more than 5% of a class of covered equity securities</p>

is generally required to file with the Commission, and send to the issuer and each exchange where the security is traded, a Schedule 13D within 10 days after such acquisition. Paragraphs (b) and (c) of Rule 13d-1 permit a Schedule 13G to be filed and sent within 45 days after the end of the calendar year by persons who otherwise would be required to file a Schedule 13D if the conditions specified in Rule 13d-1 are met.

Section 13(f), which was added to the Exchange Act by the Securities Act Amendments of 1975, generally requires institutional portfolio managers who exercise investment discretion over \$100,000,000 or more of equity securities registered under Section 12 to disclose their securities positions on a quarterly basis. Section 13(f) was designed to create a central depository of data concerning the investment activities of large investment managers and thereby to facilitate the consideration of the public policy implications of their influence and impact upon the securities markets.

Section 16(a) of the Exchange Act generally requires every person who is directly or indirectly the beneficial owner of more than 10% of any class of equity security registered pursuant to Section 12 of the Exchange Act, and every director or officer of an issuer of such security, to file with the Commission (and the exchange, if any, on which the security is listed) an initial report disclosing the amount of all equity securities of such issuer of which he or she is the beneficial owner and a further report within 10 days after the close of each calendar month in which there has been any change in such beneficial ownership. Rule 16a-3 requires the filing of a Form 3 for initial reports of beneficial ownership and Form 4 for statements of changes in such beneficial ownership. Section 16(a) is designed to facilitate the recovery by the issuer of short-swing profits made by corporate insiders, as well as provide information concerning purchases and sales by insiders to public investors, which may indicate insider opinions of company prospects. Section 16(c) prohibits short sales by such persons.

In the late 1980s and early 1990s, there were discussions on whether there should be comparable disclosure of short positions in equity securities. The Subcommittee on Commerce, Consumer and Monetary Affairs of the House Committee on Government Affairs held hearings on the market role of short selling. See Short Selling Activity in the Stock Market: The Effects on Small Companies and the Need for Regulation, Hearings Before the Subcomm. on Commerce, Consumer and Monetary Affairs of the House Comm. on Government Affairs, 101st Cong., 1st Sess. 192 (1989). In addition, proposed federal legislation was introduced in 1990, that, among other things, proposed requiring the public reporting of material short security positions. Congress did not take any action on the bill. However, in response to the proposals for a material short position reporting requirement, the Commission published a concept release in 1991 soliciting public comment on whether the Commission should require public reporting of material short security positions in publicly traded companies in a manner analogous to the reporting requirements for material long security positions. See Exchange Act Release No. 29278 (June 7, 1991). The Commission has not taken further action on this issue.

11.	Please state whether data relating to equity lending and borrowing is collected in your jurisdiction, whether any of this information is published and, if so, in what form (e.g. for the market as a whole or by individual security). Even if such information is not collected for regulatory purposes, it would be helpful to know whether settlement centres hold such information as a result of their role in the stock lending process.
Australia	The ASX collects information relating to equity lending and borrowing via the net short sale report, however this is not separated from naked shorts.
Brazil	See answer 9.
Canada: Ontario	Data is collected by the IDA. Dealers provide information in their annual filings of the Joint Regulatory Questionnaire and Report.
Canada: Quebec	Data relating to equity lending and borrowing is collected in Québec as part of the information that must be filed annually by members of the Investment Dealers Association of Canada and of the <i>Bourse de Montréal Inc.</i> in the Joint Regulatory Financial Questionnaire and Report. The following schedules comprise securities borrowed and securities loaned information: SCHEDULE 1 - ANALYSIS OF LOANS RECEIVABLE, SECURITIES BORROWED AND RESALE AGREEMENTS SCHEDULE 7 - ANALYSIS OF OVERDRAFTS, LOANS, SECURITIES LOANED AND REPURCHASE AGREEMENTS
France	Since April 2002, under the CMF Regulation (article 7-1-5 of the General Regulations of the CMF), securities lending/ borrowing transaction and repos in equities admitted to trading on a French regulated market have to be reported to the CMF. Transactions made on the equity lending market operated by Euronext are disclosed to the public. Securities settlement systems also hold information on equity lending and borrowing securities as a result of their core function.
Germany	There is no specific data collection for regulatory purposes as far as equity lending and borrowing are concerned. Even though short sales executed via securities loan transactions or repurchase agreements usually are subject to the reporting requirements of the BAWe, such loan transactions or repurchase agreements per se are not considered as transactions susceptible to insider trading because the securities borrower or purchaser of a repurchase agreement has to return the securities to the lender or seller at a fixed rate and at a specific date already determined at the time of the transaction, so that there is no opportunity to make use of insider information. However, the Fourth Financial Market Promotion Act contains a proposal for a introduction of a provision empowering the BAWe to get access to

	<p>information about loans on securities collected by the German central securities depository for the purpose of investigations into market manipulation.</p>
Hong Kong	<p>Under the Securities (Stock Lending) Rules, stock lenders are required to maintain records of their lending activities. These records must be kept for 12 months and must be provided to the Commission upon request. There is no requirement for this information to be made public.</p> <p>In addition, certain stock lending activities are exempt from payment of stamp duty. To enjoy this exemption, lenders are required to maintain certain records and ledgers of their stock lending. Again, these are filed/submitted to the relevant authority, the Stamp Office (which is a department within the Inland Revenue Department of the Hong Kong Government). Again, these records are not publicly available.</p> <p>The Code of Conduct requires SEHK Participants to record full and complete details of any securities borrowing or lending activities to which it is a party. The records should be made available for inspection by the Commission (or the Collector of Stamp Duty in respect of the borrowing records). The securities borrowing and lending information is not required to be published.</p> <p>The Hong Kong Securities Clearing Company Limited does not presently maintain information relating to stock lending.</p> <p>Currently, stock lending positions are not subject to other reporting requirements. However, under the recently enacted Securities and Futures Ordinance¹⁷, stock lending activities will also be required to be reported under the substantial shareholding disclosure regime for the acquisition of interests in listed securities. Some exceptions apply.</p>
Italy	<p>In the past, Consob adopted rules requiring intermediaries to report their “riporti & anticipazioni” operations on securities admitted to listing. The objectives were: a) to ensure the orderly conduct of trading and market transparency; b) to provide the timely dissemination of information to the market on the speculative burden in place on each listed securities.</p> <p>Moreover, in presence of the account settlement, there was an exchange session once a month for the equity lending and borrowing (the price was represented by the tax of interest: the lower the tax the greater the short positions on the security). The changes in the market microstructure and the adoption of the rolling settlement procedure made it impossible to continue with the equity lending and borrowing session and the attempt to replicate an exchange session in the new market microstructure had not success.</p>
Japan	<p>As to the “standardized margin transactions”, securities finance companies disclose the balance of the lending stocks of each issues through newspapers, wire services, and HP of securities finance companies on a daily basis.</p>

¹⁷ **Although enacted, the Securities and Futures Ordinance has not yet commenced. It will commence when on a date to be published in the government gazette. The commencement date is likely to be in early 2003.**

	<p>As to the “negotiable margin transactions”, JSDA discloses the total balance of the lending stocks of public companies on a monthly basis. In addition, JSDA is planning to disclose the balance of the lending stocks of each issues on a weekly basis.</p> <p>* Standardized margin transactions</p> <ul style="list-style-type: none"> - lending fee and period of settlement are regulated by stock exchange rules. - securities companies may borrow stocks and cash needed from securities finance companies (“loan transaction”). <p>*Negotiable margin transactions</p> <ul style="list-style-type: none"> - lending fee and period of settlement are negotiable - loan transactions may not be used for negotiable margin transactions. <p>Securities companies lend stocks or cash from institutions except securities finance companies.</p>
Malaysia	All authorised lenders and borrowers were required, under the securities borrowing and lending guidelines, to submit within 10 days of the last day of the reporting month details of all lending and borrowing transactions to the Kuala Lumpur Stock Exchange every month and to the Collector of Stamp Duty every half-year.
Mexico	The Mexican central depository and settlement agency, S.D. Indeval, carries an electronic trading system to conduct securities borrowing transactions. The information of every transaction carried out is reported daily to the CNBV.
Netherlands	The NAFM does not collect data relating to equity lending and borrowing. Euronext Amsterdam does, see question 8.
Singapore	CDP keeps records of its securities borrowing and lending activity. Other clearing members/member companies are required to report the market value of securities borrowed and lent by them, in their monthly submissions of their ‘Statements of Assets & Liabilities’. Such information is not published.
Spain	The daily bulletins of the Spanish stock exchanges publish, by individual security, information about bilateral stock lending regarding the number of shares communicated, the number of shares cancelled and the outstanding balance.
Sweden	See para 8.
Switzerland	Such information is neither collected for regulatory purposes nor published. Securities lending and borrowing is offered by SIS (SEGA Intersettle), the national securities clearer, according to its regulation (Market Guide Operational Information). Therefore SIS does hold information about positions resulting from securities borrowing resp. lending.
UK	Data on equity lending and borrowing is not systematically collected in the UK with a view to making such information public. However, since the main mechanism in the UK for facilitating stocklending and borrowing is CREST, the equity settlement system, all transactions pass

	through that system and must be appropriately identified.
US:SEC	<p>Individual securities lending transactions are generally not disclosed. However, the aggregated dollar amount of collateral that the broker-dealer owes, or is owed, in connection with its securities lending activity is disclosed annually to the firm's customers and others in audited statements of financial condition. An unaudited statement of financial condition containing this information is also provided to the firm's customers and others approximately six months after the audited statements.</p> <p>Mutual funds disclose their securities lending policies in their registration statements. The disclosure may be in the fund's Statement of Additional Information unless the policy is a "principal investment strategy," in which case the disclosure must be in the fund's prospectus. In addition, a mutual fund that is engaged in securities lending must disclose in its semi-annual financial statements: the total market value of its loaned securities as of the date of the financial statements; the fund's policy with respect to the collateral received by the fund in connection with securities loans; and any material income earned from securities lending activities.</p>

12.	If you do not require the identification/reporting of short sales, do you assess the extent of short selling (either in general or in individual securities) by other means – e.g. by talking to dealers, monitoring securities lending etc?
Australia	ASIC and/or ASX might seek this type of information on a case by case basis – for example, during the course of an investigation into the conduct of a market participant. ASIC intends to discuss these issues more extensively with dealers in the near future, particularly in the context of the increase in securities lending and its impact on reporting requirements in our jurisdiction.
Brazil	See answer 9.
Canada: Ontario	N/A
Canada: Quebec	N/A. Québec requires the identification and the reporting of short sales.
France	Assessment of short selling can be done informally by talking to dealers. Information available to the CMF and to the COB on securities lending, either directly or through the records of the Securities Settlement Systems can also be used as a proxy to assess the trend in securities lending, either in general or in individual securities. Information on short selling and securities lending can also formally be asked by the French regulators (CMF and COB) to firms, SSS, investors for the implementation of their respective competences, investigations and sanctioning powers.
Germany	The extent of short selling is not assessed in a way different from that described in question 11 of this questionnaire.
Hong Kong	Not applicable because identification and reporting of short selling transactions are required.
Italy	No.
Japan	• -
Malaysia	The exchange had surveillance mechanisms to monitor for unusual short-selling/trading activity.
Mexico	Identification and reporting of short sales and securities lending is required in Mexico.
Netherlands	If there are specific indications that short selling is causing problems i.e. possible cases of market abuse, questions regarding short selling are part of the usual arrangements for the exchange of information between Euronext, the NAFM and securities institutions
Singapore	Data kept by brokers on share lending to their clients are reviewed to determine the extent of financial exposure and its impact on the brokers' financial position. The SGX carries out daily general market surveillance of the trading activities in the market for any unusual or irregular market

	movements.
Spain	On a daily basis, the SCLV provides to the CNMV with information about the fines imposed to the participants of the SCLV for short sales, as it was mentioned in question 2. Besides, the CNMV, in the habitual performance of its supervision activity, can request information about the Register References in order to identify short sales.
Sweden	This is done on an ad-hoc basis.
Switzerland.	No specific assessments have taken or shall take place.
UK	The UK equity exchanges and the FSA normally become aware of significant short selling as a result of following up on exceptional market activity (e.g price movements, heavy volume etc), by monitoring securities considered likely to attract short selling and by keeping in close contact with market participants.
US:SEC	Please see our response to Question #8. All short sales are required to be marked as such and are reported.

13.	Please describe how short sales information is utilised in the market supervision process.
Australia	The ASX monitors the reporting of short sales.
Brazil	Short sales are not disclosed/recorded as such. Securities lending is. The CVM receives a daily transactions report from the São Paulo Securities Bank – BTC, which is a department of the Brazilian Settlement and Custody Company – CBLC. The report lists all securities lent, volume, lenders and borrowers and rates. The surveillance division checks this information for possible collusion schemes, insider trading, etc.
Canada: Ontario	Generally the emphasis is on ensuring the required disclosure through the short position reports and identification of unmarked short sales. The Surveillance department at RS Inc. watches for manipulation through short sales (and unmarked short sales) and produces a “highlights” report that is compared against news relating to each issuer as well as against unusual trading immediately prior.
Canada: Quebec	Short sales information is collected by exchanges in order to publish it twice a month only. Exchanges do not use this information in the market supervision process to perform regulation activities but rather to supervise listed companies.
France	<p>Covered short sales (i.e. coupled with securities borrowing) information is not utilised on a daily basis by the COB market surveillance. However, when abnormal movements are detected in a specific equity, an IT program reconciles the information available on securities lending/borrowing in that equity from the SSS together with the transactions that took place to assess whether the cash market transaction was a short sale or not (and vice versa for buy transactions required afterwards to unwind the securities lending/borrowing transaction). This is a useful information to understand a trading pattern, detect and investigate potential market abuses.</p> <p>The recently introduced requirement that equity lending/ borrowing activities have to be reported to the CMF will also contribute to better understanding of trading trends and patterns as such information is considered as a valuable proxy for short sales.</p>
Germany	As far as general market scrutiny is concerned information about short sales is not used in the market supervision process. However, information about short sales is employed in cases of obvious suspicion (e.g. market manipulation).
Hong Kong	<p>Supervision of short selling activities is done through (routine and special) inspections by staff of the Commission’s Intermediaries Supervision Department, observation of abnormal trading and settlement activities by our Surveillance Department, and complaints made by investors to the Commission. During the course of inspections, staff of the Commission will check if there are any breaches of short selling provisions.</p> <p>The information gathered will be used to see whether there is any potential manipulation of the market as well as to monitor whether there</p>

	is building up of large open positions which may cause systemic risks to the market.
Italy	In general terms, the aim of gathering short-sales information by regulators is to monitor the orderly conduct of trading in the markets and the speculative burden on listed securities. That was the objective of Consob Resolution n. 51/90 (see answer to question 5). However, such monitoring activity raised enforcement issues specially with respect to foreign intermediaries activity on domestic markets. MOUs between regulatory authorities did not represent an adequate mean to obtain information and to conduct a monitoring activity on a regular basis
Japan	<p>As to margin transactions, if the balance of short-selling as against the balance of long position of each issue reached the level set forth by the rules of stock exchanges and JSDA, or if the balance of short-selling or long position reached the level set forth by rules, stock exchanges and JSDA designate the issue as “daily-publicized stock” and disclose the balance of short-selling and long position on margin transactions on daily bases in order to prevent investors from utilizing margin transactions excessively.</p> <p>In addition, stock exchanges and JSDA can raise the ratio of margin deposit of an issue.</p> <p>Securities finance companies provide “precautionary notification” on the individual stocks, of which orders of selling on margin transactions extraordinarily exceed those of buying, which may make it difficult for securities finance companies to borrow the stocks. In the case where the excessive unbalance makes it difficult for securities finance companies to borrow the stocks, they can limit or stop the use of their stock lending system by securities companies. Under this circumstance, investors can be restricted to make a newly short-selling order on standardized margin transaction.</p>
Malaysia	Direct sources of information on short sales included relevant disclosures by stockbroking member firms to the exchange and data recorded in the exchange’s electronic trading system, which identified short sales explicitly. In addition, relevant disclosures by authorised securities borrowing and lending agents could also give an indication of short sales activity. Hence, from the perspective of market supervision, the impact of short-selling activity on a particular stock was very transparent and it was possible to verify the accuracy of short-selling disclosures through a number of direct and indirect sources of information.
Mexico	The CNBV monitors the reporting of short sales and pays more attention to significant exposures, in order to oversee systemic risks and possible use of inside information.
Netherlands	The NAFM could use the overview of cumulative short positions (Baisse reportage) in combination with other (incidental) signals, to determine possible cases of market abuse.
Singapore	Not applicable

Spain	Short sales information is utilised to understand the nature of certain transactions on the cash market. In order to supervise the markets, it is essential to link the trading information with the stock lending information and the short sales information.
Sweden	It is a part of the general analysis of background material for insider investigations and also plays a part in the surveillance of market manipulation.
Switz.	On a regular basis there is no special use of short sales information as such information is not collected; such information could instead be of interest in relation to specific investigations regarding suspicious transactions under insider or price-manipulation aspects or in relation to a general misbehaviour under the fit and proper requirement.
UK	Details of significant short sales/short positions are normally obtained as a result of monitoring relevant transaction reports over a period of time or through requests to intermediaries for information. This information will normally be required, like other forms of information, when investigating a firm or an individual's activity for potential rule breaches/abuse.
US:SEC	The SROs conduct surveillance regarding compliance with short sale regulation. In addition, the Commission's Office of Compliance Inspections and Examinations also conducts examinations for potential violations.

14.	Please describe how you verify compliance with your short sale disclosure requirements.
Australia	<p>Failure to disclose that the sale is short when required by the Act is an offence.</p> <p>Short selling on the ASX is capped at 10% of issued stock. Supervision by the ASX occurs to ensure that this cap is not breached</p> <p>Short selling disclosure is also reviewed as part of the ASX's compliance checklist for market participants.</p>
Brazil	N.A.
Canada: Ontario	Disclosure requirements are verified through reviews of dealers by their SROs and by SROs' surveillance of trading patterns. The price ticking rules are generally system-enforced, once a sale is marked "short".
Canada: Quebec	Short sales disclosure requirements are verified by the Commission des valeurs mobilières du Québec or SROs when they perform a review of the dealers. Commission des valeurs mobilières du Québec, the Investment Dealers Association of Canada and the Bourse de Montréal Inc. verify compliance with member regulation provisions related to short sales of equity when they perform examinations of dealers. Market Regulation Services Inc. verifies compliance with market regulation provisions related to short sales when performing desk reviews of the exchanges' participants.
France	Not applicable.
Germany	As mentioned under question 9, there are no special disclosure requirements concerning short sales. For this reason, there is no verification of compliance with the disclosure requirements.
Hong Kong	<p>Verification of compliance with short sale disclosure requirements would be done mainly through inspections by the Commission (please refer to answer 13) although the SEHK will also monitor compliance by exchange participants with its rules.</p> <p>In addition, the SEHK and HKSCC will monitor settlement failures daily. Settlement failures suspected to be caused by short selling will be passed to the Commission for further inquiries and possibly, criminal prosecution or disciplinary action.</p>
Italy	n.a.
Japan	<p>Securities and Exchange Surveillance Commission checks whether securities companies comply with "the mark and confirm rule" on their on-site inspections.</p> <p>Financial Services Agency requested securities companies to check whether the companies themselves comply with "the mark and confirm rule" last December.</p> <p>In and After last December, FSA has taken administrative actions on securities companies because of the violations of short-selling regulations</p>
Malaysia	See response to question 15.

Mexico	Information regarding securities borrowing and short sales is matched, the first comes from the settlement agency, the latter comes from the exchange and also from each brokerage house. It's also verified in the investigation process where some cases have been found in which short sales were carried out but not disclosed.
Netherlands	Verification of compliance is part of the usual monitoring by DNB and NAFM, whereby audits take place on a regular basis or ever so often as is deemed necessary.
Singapore	Not applicable
Spain	No short sale disclosure requirements.
Sweden	This is one aspect of the ongoing supervision of exchanges and market places
Switz.	n.a.
UK	There is no disclosure requirement.
US:SEC	Please see response to Question #9.

15.	Please describe briefly any significant changes or any major reviews of short selling regulation in your jurisdiction in recent years, the main conclusions and subsequent regulatory actions.
Australia	No major reviews have been conducted and no significant changes have been made recently. The most recent review of the short selling regime was undertaken by ASIC in 1994.
Brazil	N.A.
Canada: Ontario	There have been no significant changes. The UMIRs clarified some of the rules that had been in place previously regarding exemptions and a marker was added for short exempt trades, whereas previously they had been entered as “long”.
Canada: Quebec	No significant changes or major reviews of short selling regulation have been performed in Québec in recent years.
France	The most recent change is indirectly linked to short sales and deals with the reporting requirement to the CMF introduced in April 2002 for equity lending/borrowing transactions and repos. It is too early to draw a conclusion from this change.
Germany	There have been no significant changes or major reviews of regulations for short selling in recent years. However, concerning the amendments planned for the future please see question 5 and 8 of this questionnaire.
Hong Kong	<p>Subsequent to the enactment of the Securities Ordinance in 1974, section 80(1) of which prohibits naked short selling, the first major change was in 1994, when regulated short selling (i.e., covered short selling) was permitted under the SEHK Rules.</p> <p>Over the years, the Commission has created exemptions from section 80(1) (Rule 17 of the Securities (Miscellaneous) Rules) for certain market neutral transactions, such as hedging transactions of stock options and stock futures market makers.</p> <p>In 2000, a major review took place in response to the Asian financial crisis when it was considered by some that one of the factors contributing to the crisis was short selling. The measures that were introduced included the enactment of sections 80A to C of the Securities Ordinance and the Securities (Stock Lending) Rules which imposed reporting and record keeping requirements on stock lenders and short sellers as well as increasing the penalty for naked short selling on the Exchange and criminalizing unreported short selling on the Exchange. These measures were aimed to enhance compliance by ensuring all short selling activities concluded through the SEHK are properly reported and recorded. As a result, a proper audit trail for the transactions are created.</p> <p>Currently, in response to the request of market participants, the Commission is considering a relaxation of the short selling regulations. The proposals will include –</p> <ul style="list-style-type: none"> • allowing all categories of market makers/liquidity providers to conduct naked short sales in performing their market making

	<p>obligations as well as for hedging purposes;</p> <ul style="list-style-type: none"> • exemptions from the reporting requirements – these include alternative modes of compliance with the record keeping requirements; and • more exemptions from the tick rule for certain classes of market neutral transactions.
Italy	See answer to question 5
Japan	<p>The Securities and Exchange Law were amended to adopt the short-selling regulations to selling of borrowing securities in October, 1998.</p> <p>“The mark and confirm rule” has been introduced into the short-selling of stocks on margin transactions in February, 2002.</p> <p>“Prohibition of short-selling below the price at the last reported sale” was amended to, in general, “prohibition of short-selling at or under the price at the last reported sale when the stock price is falling”(“Up-Tick Rule”).</p>
Malaysia	See response to question 2.
Mexico	CNBV hasn’t conducted any reviews on short selling regulation since 1996.
Netherlands	No significant changes.
Singapore	Not applicable
Spain	No changes.
Sweden	No major changes during the last years
Switzerland.	See cf. 2, the reporting and the disclosure of figures about short selling will be on the agenda shortly, as well as discussions about restrictions of short sales under specific circumstances.
UK	The Securities and Investments Board (predecessor to the FSA) reviewed short selling in 1996 in conjunction with the Treasury’s proposals to liberalise the stamp duty regime in respect of equity stockborrowing - the potential effect of which would be to make it easier for persons other than market makers to sell short. The SIB concluded that it saw no reason to introduce new regulations at that stage but that it would keep the position under review and also investigate further the possibility of stocklending data being published. In the event, no further action has been taken.
US:SEC	The Commission issued a Concept Release in October of 1999 seeking comment on ways to modernize short sale regulation (Securities Exchange Act Release No. 42037 (October 20, 1999), 64 FR 57996 (October 28, 1999). In particular, the Commission sought comment on the following concepts: (1) suspending the Rule when a security or market is above a threshold price; (2) providing an exception from the Rule for actively traded securities; (3) focusing short sale restrictions on certain market events and trading strategies; (4) excluding hedging transactions from short sale regulation; (5) revising the short sale rule in response to certain market developments, such as after-hours trading and decimal pricing; (6) revising the definition of short sale to reflect market

developments, such as to reduce the need to aggregate positions within a single entity; (7) extending the short sale rule to non-exchange listed securities, such as the OTC markets; (8) eliminating the short sale rule; (9) changing the short sale rule to a bid test.

We received more than 2600 comment letters which reflected a wide range of views on short sale regulation. Some commenters opposed any short sale regulation. The commenters favoring short sale regulation agreed that it should be designed to prohibit and prevent manipulation. The vast majority of the comments were submitted by individual investors who urged further regulation to prevent short sale abuses in non-exchange securities. A significant number of industry participants also supported extending short sale regulation to cover Nasdaq SmallCap, over-the-counter bulletin board (“OTCBB”) and Pink Sheet securities.

16.	Please state whether you have had experience of, or have reason to believe that you face, potential problems flowing from unregulated (or differently regulated) short sales of securities which have their main market in your jurisdiction arising from short selling activity (whether on or off exchange) conducted outside your jurisdiction.
Australia	<p>There is no evidence at this stage of any problems flowing from unregulated short sales of securities that have their main market in Australia from activity conducted outside of the jurisdiction.</p> <p>The only context in which we have given any detailed consideration to the potential for unregulated short selling outside of this jurisdiction in relation to securities having their primary market in Australia was in the context of the trading link established between ASX and the Singapore Stock Exchange.</p> <p>In that case, while short selling of ASX securities in Australia is regulated by the operating rules of ASX and is restricted to particular listed securities, I understand such activity would not have been caught by the rules of SGX. This raised the possibility that Singapore participants linking to our market may have been able to engage in activity not permitted by participants located in Australia. We did not need to resolve the issues as the ASX embedded into their agreement with SGX a prohibition on short selling of any securities traded over the link.</p>
Brazil	N.A.
Canada: Ontario	The problems are of a more practical nature: short sales on a foreign market must follow that market's rules (which may be different) and Ontario dealers, their direct access clients and subscribers to ATSS must be aware of these rules in addition to those in Ontario when dealing in foreign securities or interlisteds.
Canada: Quebec	Québec has had no experience of, or reason to believe that it faces, potential problems flowing from unregulated (or differently regulated) short sales of securities which have their main market in its jurisdiction arising from short selling activity (whether on or off exchange) conducted outside its jurisdiction. This situation is in large part explained by the fact that Canadian securities are usually inter-listed in the United States where short sales regulation is similar to that of Canada
France	No specifically identified concern
Germany	No specific experience.
Hong Kong	We believe it is possible
Italy	We have not faced any problems flowing from unregulated short sales of securities which have their main market in our jurisdiction and arising from short selling activity conducted outside our jurisdiction
Japan	In the case of short-selling by a non-resident in jurisdiction A, if a securities company in jurisdiction A executes principal transaction with the non-residents, the selling order of the securities company placed in a Japanese stock market is regarded as cash transaction. Short-selling regulations are not adopted to the transaction

Malaysia	Concerns had been raised in the past of instances where short sales Malaysian securities carried out in other markets were being supported by offshore securities lending and borrowing arrangements.
Mexico	At this point neither the CNBV nor the intermediaries have any reason to believe there are problems regarding short sales regulation.
Netherlands	We have no indication of potential problems.
Singapore	The buying-in mechanism and the power to restrict short sales of designated securities have worked well. We have not faced any problems in this area.
Spain	In Spain all the trading is carried out on regulated markets so the short selling activity is conducted on regulated markets.
Sweden	None
Switz.	No specific experience
UK	Since the FSA does not regulate short sales per se, this is not an issue.
US:SEC	We are evaluating whether short sales emanating from outside the US are having adverse effects on our markets. In addition, there may be instances where short sales are “booked” in non-U.S. jurisdictions in an attempt to avoid application of U.S. short sale regulations.

17.	Please record briefly any observations on short selling and/or its regulation in your jurisdiction that may be useful for SC2 to consider in the context of this paper.
Australia	<p>There is not a great deal of public debate on the short selling regime and its appropriateness. It has, however, been suggested that the regime is cumbersome and complex and no longer appropriate in its present form¹⁸. The lack of civil penalty for breaches of the prohibition has also been criticised.</p> <p>From a market perspective, the ASX is of the view that the new market structure characteristics relating to automation, settlement risk management through fixed settlement cycles with attendant fail fees and a thriving Securities Lending environment have superseded short selling regulation in the management of the main settlement failure risks.</p> <p>In addition, the expansion of market participant types to include cross-product arbitrageurs, market makers, hedge fund managers and of market products such as warrants and ETF's has left the existing short selling regulation wanting and arguably redundant. Derivative products now provide a more efficient means for professional traders to take a position in a bear market than short selling alone.</p> <p>Yet the ASX considers that these same participants still look to manage their risk through off-setting positions in the underlying equities market. This level of sophistication in our marketplace has greatly broadened the number of trading strategies behind taking a short position. The diversity of view and attention now given to pricing discrepancies as trading opportunities argues to the significant reduction of risk that a bear raid will occur and the stronger probability of a rapid correction of any abnormal movement.</p>
Brazil	N.A.
Canada: Ontario	There are many reasons for short selling, including for hedging, that may make public disclosure of the information misleading. To some extent, aggregate short position reports are useful indicators of market direction, but without knowing the strategy behind an individual transaction, the usefulness is somewhat limited.
Canada: Quebec	We have no other observation to submit to SC2 for consideration.
France	<ul style="list-style-type: none"> - Impact of short selling on market volatility; - Lack of transparency in, if not opacity of, the securities lending underlying short selling.
Germany	We have no further remarks that would have to be considered in the context of this paper. With regard to the terrorist attacks on the United

¹⁸ Goldwasser, V-R. "The Regulation of Stock Market Manipulation and Short Selling", Securities Regulation in Australia and New Zealand, (1998) 515, Kedzior, A "Short Selling in Australia", Adelaide Law Review vol 11 no 3 327.

	States on 11 September, 2001 it should be mentioned that this event did not lead to a surge in short sales/short selling activity.
Hong Kong	There are difficulties in enforcement and surveillance/monitoring of short selling, which is conducted in overseas jurisdictions. This may inhibit the regulator's ability to monitor the effects which short selling of local securities conducted overseas will have on the local market.
Italy	n.a.
Japan	-
Malaysia	From the perspective of market stability, the rapid growth of cross-market and cross-asset trading activity is more and more likely to test the effectiveness of provisions concerning short-selling disclosure and supervision. For instance, certain trading strategies may have been carried out during the height of the East Asian crisis that involved the concurrent short-selling of equity and currency positions within several jurisdictions in the region. Such "dual plays" would have gained from a coincident decline in both asset markets as a result of the prevailing direction of economic policy at the time.
Mexico	We believe that our short sales regulation is adequate because it sets the proper restrictions regarding who can carry out such transactions, where they can take place, which types of securities are suitable for short selling, what level of disaggregation of information is disclosed to the public, at which price should trades take place, how inherent risks should be valued and handled by market participants and that all sales should be performed with the securities on hand, in order to avoid settlement problems.
Netherlands	The NAFM has no further observations with respect to short selling and/or its regulation in the Netherlands
Singapore	Given the lack of regulation on short sales in Singapore, we hope to learn from the experience of other jurisdictions. We are constantly reviewing our regime with the aim of further enhancing the price discovery process in our markets. One area that we considered was greater transparency in terms of more formal reporting of short positions. Nonetheless, we recognise that this is difficult to achieve without specific rules governing and defining short sales. An alternative would be to use proxy data such as securities lending data but complete information would be difficult to obtain as securities lending services are provided not just by the SGX, but also by market participants such as brokers and custodians. In addition, the accuracy of such data as a proxy for short-selling activities is also questionable because market participants may borrow securities for other purposes other than for the covering of short positions e.g. hedging of derivatives exposure.
Spain	It would be important to point out the relevance of short sales in the trading activity as it plays a significant role in the arbitrage between cash and derivatives markets. It should be remarked that the short selling activity should not amplify the effect that short sales could cause in the price of the securities. Bearing in mind that short sales are usually hedged by lending securities, it would be convenient to analyse this relationship, including a brief

	description of the rules and arrangements covering transparency of securities lending and the methods of achieving it.
Sweden	None
Switz.	<p>Advantages of short sales: more liquidity in the market, better price efficiency; interesting for brokers and for the lenders because of the transactions resp. lending fees to pay.</p> <p>Disadvantages of short sales: restrictions of market function as the short seller is under pressure to buy the securities when the borrowed security has to be delivered to the lender; the shareholders are suffering by the price pressure and by a asymmetry of information (the short seller is a kind of an insider as he set a price relevant fact). The position of the issuer is weakened as short sells are usually done in securities having already a negative momentum.</p>
UK	To the extent that there are, from time to time, concerns in the UK market about short selling practice, the preference appears to be for mitigation via greater transparency rather than restrictions on short selling per se.
US:SEC	-

18.	Please include any data that provides an indication of the extent of short selling in your jurisdiction and, if available, any evidence indicating the main reasons why short sales occur.			
Australia	Please see attachment			
Brazil	(Being collected.)			
Canada: Ontario	No general data available. For most recent Top 20 Largest Consolidated Short Position Report from the TSX, please go to www.tsx.ca and search on “short positions”.			
Canada: Quebec	There is no such information available.			
France	There are no statistical data available as to the extent of short selling.			
Germany	Statistical data are not available. In general securities lending transactions play an important role for maintaining the functioning of German capital markets. Short sales and the related securities lending transactions are generally not intended to push down securities prices or to destabilise a capital market – even if they – in very volatile markets – may accelerate the drifting down of prices. However, in Germany they are regarded as a common practice that provides liquidity to a market. On the German capital market this measure is used, first and foremost, by institutional investors.			
Hong Kong	Below are the statistics of regulated short selling activities concluded through the SEHK for the years from 1997 to 2002.			
	Year	Number of shares sold short	Value of short selling transactions (HK\$ million)	Value of total market turnover (HK\$ million)
	2002	6,058,301,080	70,601	1,599,074.57
	2001	6,228,395,181	65,627	1,950,086.74
	2000	3,561,815,296	77,198	3,047,565.32
	1999	2,521,983,076	63,960	1,915,940.58
	1998	3,304,022,199	74,192	1,701,112.01
	1997	2,211,632,720	45,535	3,788,959.79
Italy	n.a.			
Japan	Please refer to Question 9 as to the volume of short-sellings.			
Malaysia	There is no public information available, as the practice is currently prohibited.			
Mexico	-			
Netherlands	No reports on short selling are available in the Netherlands. The Baisse reportage, published in the OPC, is unfortunately only available in hard copy.			
Singapore	From the market perspective, short sellers are essential in contributing to the efficiency of stock market pricing. This reflects the basic principle			

	<p>that prices are determined by the forces of demand and supply. Sellers, including short sellers, are part of the supply equation. Short selling could also be one of the means of hedging risks of an underlying long position e.g. investment locked in a pension fund.</p> <p>Based on SGX's records, securities bought in by the SGX accounted for about 0.2% of market trades for the past year.</p>
Spain	No data
Sweden	A copy (in Swedish, regrettably) of the weekly report from the stock exchange is attached
Switzerland	<p>Advantages of short sales: more liquidity in the market, better price efficiency; interesting for brokers and for the lenders because of the transactions resp. lending fees to pay.</p> <p>Disadvantages of short sales: restrictions of market function as the short seller is under pressure to buy the securities when the borrowed security has to be delivered to the lender; the shareholders are suffering by the price pressure and by a asymmetry of information (the short seller is a kind of an insider as he set a price relevant fact). The position of the issuer is weakened as short sells are usually done in securities having already a negative momentum.</p>
UK	<p>The FSA does not collect data on short selling. As a proxy, estimated net stockborrowing figures for UK equities recorded in the securities settlement system have recently stood in the region of £20 billion – or approximately 1.5% of total UK equity value..</p> <p>Although the UK equity market has moved increasingly to order-book trading – at least in more liquid securities – a considerable proportion of short selling continues to derive from intermediary activity on behalf of clients (whether or not under exchange market making obligations). This may be a function of satisfying a client's buy order when the intermediary has no stock on its books, or of hedging an instrument sold to a client to protect the client's 'downside'. The latter might take the form of, for example, a put option or a contract for difference.</p> <p>While both active and long/short funds are commonly considered to be active users of short selling techniques, the FSA has not at this stage conducted a detailed survey of current trading practices in this area.</p>
US:SEC	<p><u>Please see response to Question #9.</u></p> <p><u>See also 2 Securities and Exchange Commission, Report of Special Study of Securities Markets, H.R. Doc. No. 95, 88th Cong., 1st Sess. 247 (1963) (Special Study); See Securities Exchange Act Release No. 13091 (December 21, 1976), 41 FR 56530 (1976 Release); Short Selling Activity in the Stock Market: The Effects on Small Companies and the Need for Regulation, Hearings Before the Subcomm. on Commerce, Consumer and Monetary Affairs of the House Comm. on Government Affairs, 101st Cong., 1st Sess. 192 (1989); Short-Selling Activity in the Stock Market: Market Effects and the Need for Regulation (Part 1) (House Report), H.R. Rep. No. 102-414 (1991), <u>reprinted in</u> CCH Federal Securities Law Reports Number 1483 Part II (1992).</u></p>

19.	Please list the main web-sites where people may be able to access further information relevant to short selling regulation in your jurisdiction.
Australia	No web sites specific to short selling have been located. General information may be found on legal web sites. http://www.austlii.edu.au/ http://www.scaleplus.law.gov.au/
Brazil	<ul style="list-style-type: none"> • A: Brazilian Central Bank: www.bcb.gov.br • Brazilian Securities Commission: www.cvm.gov.br
Canada: Ontario	<p>TSE/CDNX website: www.tsx.ca for short position reports.</p> <p>Link to Ontario Securities Act and NI 21-101 and 23-101: www.osc.gov.on.ca/en/Regulation/ontario_securities.html.</p> <p>UMIRS are found at www.regulationservices.com.</p>
Canada: Quebec	The Toronto Stock Exchange / Canadian Venture Exchange website provides information relevant to short selling with a bi-monthly report comprising the Top 20 largest consolidated short positions. The website's address is www.tse-cdnx.com .
France	-
Germany	Further information is available on the website of the Clearstream Banking AG Frankfurt at www.clearstream.com .
Hong Kong	<p>http://www.hkex.com.hk</p> <p>This website contains the SEHK Rules and daily short selling information.</p>
Italy	None.
Japan	<ul style="list-style-type: none"> • Please refer to web sites below about Question19, Question20 • Financial Services Agency - http://www.fsa.go.jp/indexe.html • Tokyo Stock Exchange - http://www.tse.or.jp/english/index.shtml
Malaysia	<p>Securities Commission: www.sc.com.my</p> <p>The Capital Market Masterplan: www.sc.com.my/html/cmp/fr_cmp.html</p> <p>Kuala Lumpur Stock Exchange: www.klse.com.my</p> <p>Malaysian National Economic Action Council (NEAC):</p>

	www.neac.gov.my
Mexico	No web sites specific to short selling have been located. General information may be found on legal web sites. http://www.cnbv.gob.mx/ http://www.bmv.com.mx/
Netherlands	-
Singapore	Not applicable
Spain	-
Sweden	-
Switz.	No specific information available.
UK	Details of primary and secondary parliamentary legislation in the UK, in particular the Financial Services & Markets Act 2000 and the Recognition Requirement Regulations for Exchanges and Clearing houses , can be found at www.hmsso.gov.uk . Additional governmental information on financial services may be found on www.hm-treasury .uk Details of FSA rules and guidance, together with the Code of Market Conduct, are contained in the FSA Handbook, which can be accessed at www.fsa.gov.uk
US- SEC	www.sec.gov ; www.sec.gov/rules/concept/34-42037.htm ; www.nyse.com ; www.nasdaq.com ; www.nasdaqtrader.com ; www.marketdata.nasdaq.com .