

## Senate Standing Committee on Economics

### ANSWERS TO QUESTIONS ON NOTICE

#### Treasury Portfolio

Additional Estimates 20-21 February 2008

**Question: aet 72**

**Topic: Lending Shares (ASIC)**

**Hansard Page: E4**

**Senator MURRAY asked:**

**Senator MURRAY**—I will refer you to yesterday's session with the markets division of Treasury where the issue of share lending was broadly discussed. I will draw your attention to the fact that whilst you are, in your remarks, well across share lending for profit-making purposes in the market, there is another category of share lending which goes on, which is for votes. That is a worry, frankly. I merely raise it with you. It has been raised with me by some market participants. I have no idea the extent in the market but, to me, individual companies have been pointed at. I do not know whether they are allegations or fact but it would seem to me that that would be a very unwise practice to be allowed to flourish.

**Mr D'Aloisio**—This is lending stock so that you can vote in a particular way? We will take that on board and have a look at it further. But of course, you do have some existing protections in the sense that, if you get over five per cent, you have to notify a substantial shareholder interest and when you do that the company itself can then seek to trace the beneficial ownership of those shares and then every one per cent increase also needs to be notified. There are some built-in protections within the existing framework but we will have a look at that further.

**Answer:**

Despite the terminology, the legal effect of a stock lending arrangement involves ownership of the securities passing from the "lender" to the "borrower". The right to vote the securities normally transfers to the borrower along with ownership. Generally the lender must exercise its right to recall the shares if it wishes to vote; or the borrower is generally free to vote the shares.

Subject to the provisions of the Corporations Act noted below, borrowing securities in order to build up a holding in a company with the objective of influencing a shareholder vote is not, itself, illegal in Australia.

Borrowing securities can give rise to obligations for the borrower under the substantial holding notice provisions in the Corporations Act - a borrower must notify the market if it has voting power of 5% or more and then must notify the market of any changes to its voting power of 1% or more.

The Corporations Act also prohibits the acquisition by a person and their associates of voting power of more than 20% in a listed company (except through permitted avenues such as a takeover), which limits the level of control a stock borrower can exert over a shareholder vote.

ASIC does not generally review meetings to determine if there has been voting through disclosed stock borrowing arrangements.