

**SENATE STANDING COMMITTEE ON ECONOMICS QUESTION**  
**(Supplementary Budget Estimates 20 October – 21 October)**

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Question: SBT 190

Topic: Short selling ban

Senator Bushby asked:

**Senator BUSHBY**—Has short selling returned to its pre-crisis levels?

**Mr D'Aloisio**—No.

**Ms Gibson**—Short selling in that period in September 2008 was at extreme levels—

**Senator BUSHBY**—I am talking more about the longer-term average.

**Ms Gibson**—until we introduced the ban. No, I do not believe so. I could check the figures but I do not believe so.

**Mr D'Aloisio**—We can check and do some analysis. One of the difficulties is that we do not have comparative numbers, in the sense that the disclosure requirements were not there. The issue of disclosure really assumed significance from September 2008 on, when we had the Lehman Brothers and the issues around short selling. So we can look at that. Certainly, we are not detecting from the market, as Ms Gibson has said, that there are concerns being raised with us that companies have been heavily short sold, and what is ASIC doing about it?

**Senator BUSHBY**—Have you performed any analysis of how the impact of the ban on short selling actually impacted on the volume of short selling in Australia. Was the ban effective while it was in place?

**Mr D'Aloisio**—I think we have reported on this in previous meetings. I need to refresh my mind. You will recall that the ban went in in three tranches. There was the initial complete ban of naked short selling and covered short selling. That went, I think, for about two or three months in the September through to the December-January period of 2008 and early 2009, when the GFC was probably at its height. Then we reopened the market, other than the financials. Then we opened the financials as well. So in that period shortselling

did have the impact that was needed, we felt, given the potential systemic issues that could have occurred for the financial sector and for the REIT sector of the Australian market.

These were matters of judgment, and no doubt historians and others with the benefit of hindsight will look at them, but certainly at the time we felt that that was the right call and certainly since then there has not been any material given to us saying that the ban was not effective and did not achieve the sorts of purposes that were needed essentially to restore confidence in the market when buyers had vacated the market.

**Senator BUSHBY**—Back in June you noted on the day of the estimates that the new short-selling system had just started on that day. You noted that it was open to receive reports but the industry was not fully ready to interact with it at that point and you had provided a period of grace of some weeks. I presume that that period of grace has ceased.

**Ms Gibson**—Yes—it has, substantially. My understanding is that the main players are now all operating through the system—that the IT people who were developing the interface privately have extended that to other clients. I would need to check whether all short sellers are now on the system.

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**Senator BUSHBY**—Okay. Could you take that on notice, please? At the time you indicated that you were looking at a period of about three weeks to allow people to get up to speed and you were confident that you would be able to make that. But we are four months later now, and if industry is not fully compliant I would be interested in knowing about that.

**Mr D'Aloisio**—We will take that on notice and confirm it in a written answer.

# Senate Standing Committee on Economics

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Answer:

#### 1) Has short selling returned to its pre-crisis levels?

The measurement of pre-crisis levels of short selling was subject to a view in the Australian market at that time that certain securities could be sold short without complying with the reporting and other requirements applying to some of the exceptions to the short selling prohibition in s1020B of the *Corporations Act 2001*.

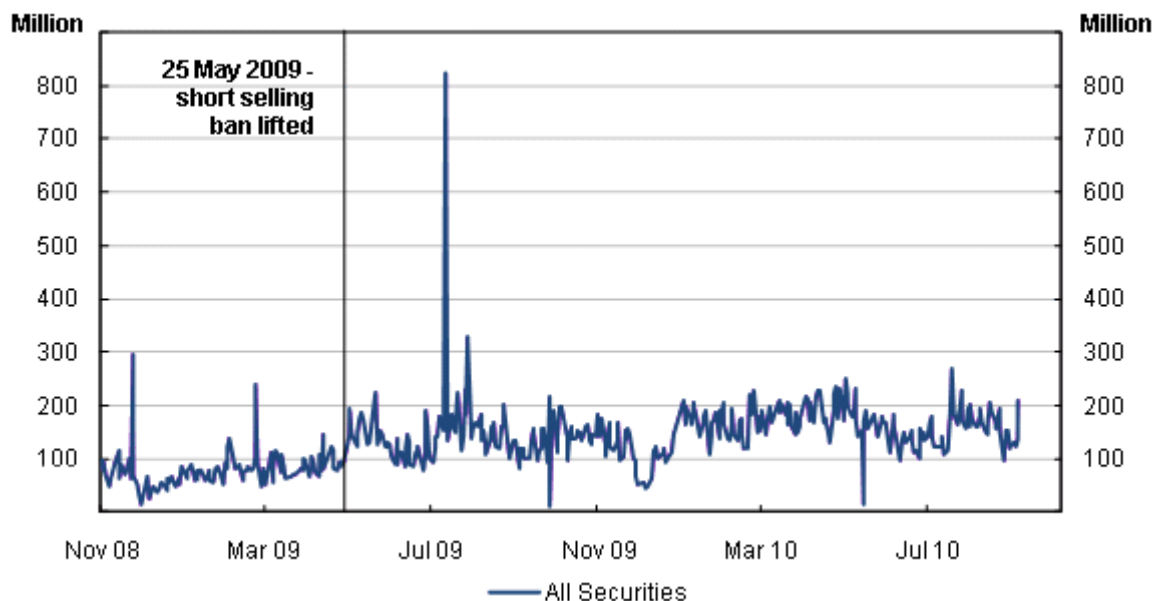
In particular there was a practice for borrowers to acquire securities from a lender subject to an obligation to return similar securities at a later date. The borrowed securities were sold with a view to repurchasing similar securities at a later stage to be returned to the lender under the securities lending arrangement. This is practice is known as "covered short selling". There was a view commonly held in the market at that time, that securities acquired under at least some of those arrangements gave rise to a 'presently exercisable and unconditional right to vest' those securities for the purposes of s1020B and therefore the sale was not technically a short sale.

ASIC took the view that it was inconsistent with the maintenance of an orderly and transparent market for covered short selling to take place without appropriate disclosure to the market place. Accordingly, on 19 September 2008 ASIC clarified the meaning of covered short sales and introduced reporting requirements through the ASX for those covered short sales which continued to be permitted. Further details are contained in the Explanatory Statement to ASIC Class Order [CO 08/751] and ASIC Media Announcement 08-204.

As a result of this increased disclosure to the market, the level of ASX reported short sales before and after the short selling ban is not directly comparable. However, the level of securities lending can be used as a guide to the amount of short selling activity.

Figure 1 illustrates the total volume of short sales from 25 November 2008. Since the short selling ban was lifted on 25 May 2009, the total volume of short sales has approximately doubled.

**Figure 1: Volume of short sales - November 2008 to September 2010**



Source: Bloomberg

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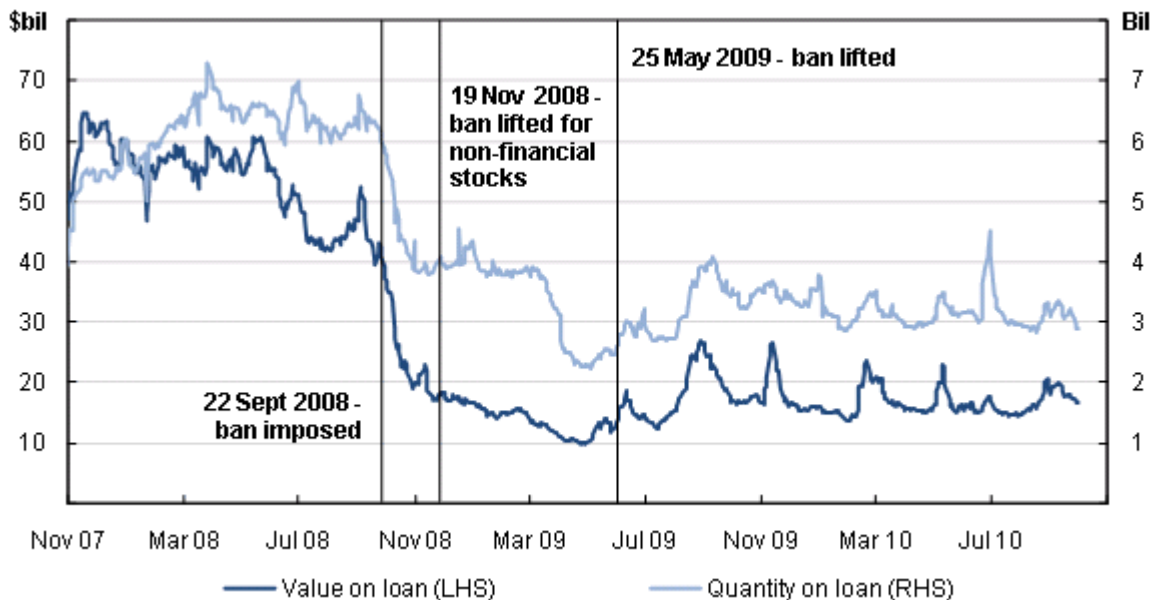
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Figure 2 shows the total value and quantity of securities on loan in Australia from November 2007 to September 2010. The total value of securities on loan peaked at nearly \$65 billion on 19 November 2007 and fell to its lowest value of \$9.8 billion on 29 April 2009.

The total value and quantity on loan fell significantly after the ban was imposed on 22 September, and continued with a downward trend until the ban was lifted on 25 May 2009. Since the lifting of the ban, the total value and quantity on loan has increased, but are at levels much lower than that prior to the ban.

**Figure 2: Securities lending - total value and quantity on loan - 1 November 2007 to 30 September 2010**



Source: Data Explorers

The average daily total value and quantity on loan is shown in Table 1. Prior to the ban being imposed on 22 September 2008, the average daily total value around 3 times higher than current levels, while the average daily quantity on loan was around double that of current levels.

**Table 1: Securities lending - average daily total value and quantity on loan (1 November 2007 to 30 September 2010)**

	Prior to 19 Sept 2008	Short selling ban 22 Sept 2008-22 May 2009	Post 25 May 2009
<b>Quantity on loan</b>	6,115,063,228	3,743,476,776	3,197,830,240
<b>Value on loan (\$)</b>	53,536,288,893	17,144,675,172	17,063,329,180

Source: Data Explorers

Since the imposition of the short selling ban, the level of securities lending activity in Australia has decreased significantly and has remained at the lower levels.

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**2) Have you performed any analysis of how the impact of the ban on short selling actually impacted on the volume of short selling in Australia.**

- ASIC closely monitored the impact of the ban on short selling throughout the life of the ban.
- ASIC believes the introduction of the ban had the intended effect of providing a circuit breaker and assisting in restoring confidence on the markets.
- ASIC considered it important to maintain confidence in financial stocks at that time and that any possible impact on market efficiency or price discovery as a result of a ban during this time period was therefore justified.

**3) Was the ban effective while it was in place?**

- Naked short selling was banned (subject to certain exceptions) and, following legislative changes under the *Corporations Amendment (Short Selling) Act 2008*, remains banned under the law.
- The total ban on covered short selling (i.e. of both financial and non-financial securities) was in place from 22 September 2008. The ban on covered short selling of non-financial securities was lifted on 19 November 2008. The ban on covered short selling of certain financial securities remained in place until 25 May 2009.
- ASIC considered these measures appropriate in the market conditions during this period, having weighed the volatility in global financial markets and the potential damage from aggressive or predatory practices from short selling, against the possible loss of some market efficiency or price discovery from having a ban in place.
- The ban was effective in ensuring the measures in place in the Australian market were in line with regulatory action being taken overseas.

**4) Have you got a view on the level of compliance with the short selling reporting obligations to ASIC?**

- Compliance from Australian short sellers appears to be quite good. We believe the main players are now engaged with the system.
- Without targeted surveillance it is not possible to measure accuracy of reported short positions. ASIC has, to date, focused on assisting short sellers to connect to the ASIC short sale reporting system. A targeted surveillance program will commence in the first half 2011.
- There are still a couple of overseas short sellers with system providers testing their reporting solutions. The short sellers are sending short reports via email.
- Technology issues exist with the one of the reporting solution that technically puts their users in breach as this service does not comply with our specification.) The vendor plans to address the technology issue in 2011 and in the interim ASIC IT has implemented a work around to allow these user's reports to be processed as if they did comply. This issue does not have a significant impact on the quality of the reports received.

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