

## **Coalition Senators' additional remarks: Short selling bill**

The Corporations Amendment (Short Selling) Bill 2008 was referred to the Standing Committee on Economics for inquiry on the 13<sup>th</sup> of November and report by 27 November 2008.

Coalition Senators are concerned that insufficient time has been permitted for the Senate Economics Committee to conduct a proper inquiry into the implications of this Bill, and are disappointed that a motion to extend the reporting date for this Bill to 6<sup>th</sup> February 2009 was not supported by the Government.

The Government argued that they want this Bill through by the end of the year.

However in the opinion of Coalition Senators there is no need to rush this Bill through.

The Government has invented a deadline which will have the effect of limiting the inquiry of the Senate Economics Committee into short selling.

The government claims to have acted in this manner in order to confirm the powers of ASIC to regulate short selling. However Coalition Senators disagree with the Government on this point and are of the opinion that ASIC can continue to regulate covered short selling indefinitely.

The Coalition Senators believe the Committee needed more time to consider the positions of the key industry stakeholders, the impact of the legislation on the market, and an appropriate framework for the disclosure of covered short selling.

Coalition Senators believed it would have been beneficial had the reporting date been extended to provide key industry stakeholders and other groups who have significant interest in these matters time to develop considered positions and be given the opportunity to make submissions or appear before the Committee in further hearings.

For example a key stakeholder within the portfolio area, the Securities and Derivatives Industry Association (SDIA), were not provided with an opportunity to verbally present at the Senate hearings. This was despite the SDIA preparing a significant submission for the Committee.

This Bill will have a significant impact on the marketplace including an impact on regional markets as indicated by the submission from State Street Bank and Trust Co. Hong Kong.

Of great concern is the lack of detail presented in schedule 3 of this Bill which deals with short selling, as it provides no assurance to the institutional market participants or to Australian 'Mum and Dad' investors that the Government comprehends the significance of the reporting of covered short selling.

This Bill is in three parts:

Schedule 1: confirms the powers of ASIC

Schedule 2: bans naked short selling

The opposition sees no problems with schedules 1 & 2.

The problems lie with schedule 3 which relates to covered short selling.

The issue Coalition Senators have with schedule 3 is that it is just a shell with no content – in other words it contains no details of what the law governing covered short selling will be and, hence, no certainty for market participants.

The Government says that rather than permit the Senate to examine and debate the details of what this law might include, bureaucrats will draw up regulations, so in effect excluding any parliamentary input so limiting parliamentary scrutiny.

Coalition Senators believe that this approach to such important legislation effectively amounts to contempt of the parliament and its processes.

The Coalition Senators believe the Economics Committee should have been provided with additional time for this legislation so that examination of issues such as:

- Reporting requirements for example, who should report transactions, the investors or the broker, and to whom, the ASX or ASIC?
- How often should reporting occur, daily, 5 days after the transaction, monthly?
- What information on covered short selling should be made available to the public – aggregates or more detailed information about individual sales and the impact this might have on the market?
- International comparisons with practice in other jurisdictions such as the United States (New York stock exchange), UK (London), France (Paris), Germany (Frankfurt) and Tokyo.

The opposition believes that the role of the Senate as a house of review is being denigrated by the government's plan to have this legislation passed and the empty shell of schedule 3 filled in by bureaucrats, creating regulations not subject to any kind of prior parliamentary input.

Coalition Senators believe the correct procedure would have been for the Economics Committee to have been provided with the time to conduct a fuller examination of the issues relating to covered short selling.

Any extension of the reporting date would not have caused any disruption or other problems in the marketplace. There is no question that ASIC can continue to regulate or ban short selling indefinitely.

In addition, Treasury officials admitted at the hearing that the regulations giving effect to Schedule 3 would not be ready before February, suggesting that a delay allowing proper consideration of the bill would not have occasioned delay in the resolution of regulating covered short selling.

In conclusion the coalition senators strongly believe 12 days does not provide a reasonable amount of time for adequate consideration of such a significant and ambiguous Bill.

**Senator Alan Eggleston**  
**Deputy Chair**

**Senator David Bushby**

**Senator Barnaby Joyce**