



Australian Government

The Treasury

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Committee Secretary
Senate Economics Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Dear Committee Secretary

CORPORATIONS AMENDMENT (SHORT SELLING) BILL 2008

Thank you for the opportunity to make a submission into the Committee's inquiry into the Corporations Amendment (Short Selling) Bill 2008 (the Bill).

The Bill includes three key short selling measures to enhance the integrity, fairness and transparency of our markets. The amendments form an integral part of the Government's response to enhancing market confidence in a period of significant market volatility. The recent international financial turmoil has highlighted the need for the corporate regulator to be able to respond quickly to issues that could potentially threaten the fair and orderly operation of our markets.

The amendments will provide certainty to the market regarding the scope of the Australian Securities and Investments Commission's (ASIC's) powers to regulate short selling. Further, the amendments will also ban naked short selling and provide for the disclosure of covered short sale transactions. The disclosure of covered short sales will reduce market speculation and rumour about the activity of short sellers, enhancing market confidence and integrity.

The measures to enhance transparency of covered short sales were publicly exposed for four weeks. We received submissions from a wide range of stakeholders including investors, brokers, the ASX and ASIC. The submissions broadly supported the disclosure of covered short sales subject to diversity of opinion on the mechanism for disclosure.

The Bill was developed in close consultation with ASIC, who fully supports the measures in the Bill.

I would like to take this opportunity to clarify a few aspects of the Bill.

First, as you are aware, the Bill sets in place arrangements that could require clients to disclose details of covered short sales (that is short sales supported by a securities lending agreement) to their executing broker (financial services licensees). We note that certain industry groups have flagged concern about the direct disclosure of short sale information to executing brokers.

Under the Bill, the primary disclosure mechanism proposed is that clients disclose details of covered short sales to their brokers (see section 1020AB), given that brokers are the common link between the client and the market. I note, however, that the Bill provides sufficient flexibility for

clients to disclose those covered short sales to another body, such as a regulator or market operator, instead. Under proposed subparagraph 1020AB(4)(a)(ii), the regulations can specify that clients disclose short sale information to an entity other than their broker.

Regulations made under the Act will also set the timing and manner of the disclosures. The Government has not yet taken final decisions on the finer details of disclosure. There will be consultation with key stakeholders, including industry, ASIC and the Australian Securities Exchange (ASX), in developing these regulations. The Government is cognisant of concerns that short sale information needs to be disclosed in a way that balances transparency with the protection of the intellectual property and other interests of the funds management sector. Regulations are expected to be made in early 2009.

Second, while the Bill proposes to ban naked short sales, it is intended that ASIC will be able to use its exemption power to allow certain naked short sales. It is envisaged that ASIC will use this power to allow some non-speculative naked short selling necessary to ensure the ordinary operation of Australia's financial markets. Non-speculative naked short selling is not linked to investors trying to profit from falling prices.

Given the dynamics of the market and the rapid changes in the conduct and structure of financial markets, the Government considers that the exemptions to the naked short selling ban are more appropriately facilitated by ASIC, rather than by law. This will allow ASIC to respond quickly and appropriately in changing market situations.

I trust this information will be of assistance to the Committee. Please contact me on 6263 3312 or Marian Kljakovic on 6263 2804 if you have any questions about the information provided or if we can be of further assistance to the Committee.

Yours sincerely



Bede Fraser
Acting General Manager
Corporations & Financial Services Division
Markets Group