



**STATE STREET**  
For Everything You Invest In™

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Senate Economic Committee  
P.O. Box 6100  
Parliament House  
CANBERRA ACT 2600  
Economics.sen@aph.gov.au

Dear Sirs:

**RE: Corporation Amendment (Short Selling) Bill 2008**

We thank you for the opportunity to provide comment on the Amendment to the Corporations Act regarding the issue of Short Selling. State Street is a market leader in securities finance. It serves as lending agent for more than 450 customers and 175 borrower relationships worldwide through 14 locations in North America, Europe and Asia and Australia. State Street has engaged in securities lending since 1974. In our capacity as a lending agent, we would like to draw your attention to the following points:

1.) We request that the abovementioned Bill incorporate and confirm the terms and conditions of AD08-23 No Action position dated 24 September 2008 from the Australian Securities & Investments Commission ("ASIC"). This will provide necessary comfort for Lenders of securities (i.e., the underlying beneficial owners of Australian securities, who enroll their securities in a program to be lent by a lending agent) to re-enter and continue to lend securities in the Australian market, as it will alleviate their concern that they would not be able to sell securities on loan without fear of an unintentional breach of section 1020B of the Corporations Act 2001. Although the No Action position has provided some comfort, there is still a great deal of concern in the securities lending community that it is only a temporary measure. Without providing legislative certainty, there still might occur a further chilling effect on the lending community and liquidity levels. Potentially more underlying lenders could exit the Australian market, and those that have temporarily suspended lending not return due to the uncertainty and related risk that institutional investors could potentially incur based on borrowers' or others' actions.

2.) 1020B(2)/RG196 –ASIC's interpretation of the current wording of Section 1020B, as set out in RG 196.11 and RG 196.12, states that the "absolute ability to give the buyer title" would require a "firm commitment," meaning a "legally binding commitment."


We believe that the following three exceptions to the obligation of a legally binding commitment should be included in the amended Bill:

- Where the borrower does not deliver the required collateral in time or as required to the Lender (Lender would not deliver securities under these circumstances);
- Where a Lender recalls the security prior to delivery (i.e., a security that may have been available for loan could be taken back by the underlying lenders);
- An operational error that results in the transfer of the securities being delayed or failing to settle in the Borrower/short sellers account.

We applaud and agree that transparency and an orderly market are of key importance especially in these turbulent times. Additionally, and at the same time, we believe markets need increased liquidity, with securities lending being one of the primary providers. The greater certainty and clarity in regulations by the clarification of this bill would naturally contribute greatly to the participants returning to the market, and greater efficiencies.

Thank you in advance for taking the time to consider our proposal, and if you or your colleagues have any questions, please feel free to contact us.

Kind regards,



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