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20 November 2008

Secretary  
Senate Economics Committee  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

By email: [economics.sen@aph.gov.au](mailto:economics.sen@aph.gov.au)

### **Corporations Amendment (Short Selling) Bill 2008**

The Australian Custodial Services Association Limited (ACSA) welcomes the opportunity to consult on the Corporations Amendment (Short Selling) Bill 2008 (the Bill).

ACSA has previously commented on the exposure draft of the Bill and its submission on that exposure draft is attached to this letter. Details relating to ACSA and its members are set out on pages 1-2 of that submission.

ACSA:

1. Supports the objectives of Treasury to increase transparency surrounding the activity of covered short sellers in Australia.
2. Questions why the Bill does not address the “no action” position issued by ASIC on 25 September 2008. ASIC has taken the view that a lender would be breaching the short selling restrictions if it entered a transaction to sell securities that were on loan before it had completed a recall of those loans. Market practice had not previously regarded such sales as short sales. ASIC has stated that it will not take action for a breach of the short selling requirements if certain conditions are met (see ASIC advisory attached to this letter). ACSA considers that, in keeping with market practice internationally, the legislation should reflect that lenders will not be regarded as engaging in prohibited activity when they sell in the circumstances outlined in the ASIC no action position.
3. Has no additional comment (other than the comments in 1 and 2 above) on the Bill in its current form.
4. Separately, notes that the Australian Securities Exchange is advocating that *Option two: disclosure of covered short sales to brokers* (as set out in the Bill) be supplemented with the reporting of securities lending data under *Option four: Disclosure of stock lending transactions*.

5. For the reasons set out in the attached submission, does not support the adoption of *Option four: Disclosure of stock lending transactions* in the form currently proposed as a means of achieving Treasury's objectives and considers that if a securities lending disclosure were to be implemented as part of a covered short selling disclosure regime, custodians should only be required to provide the market operator with details of securities lending transactions to the extent they are aware of such transactions through their role in conducting securities lending programs.

If you wish to discuss any of the matters outlined in this letter please contact me on (02) 9323 7225. I would be happy to participate in the Senate Committee hearings on this matter and have contacted Geoff Dawson accordingly.

Yours Faithfully



David Travers  
Deputy Chairman