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Corporations Amendment (Short Selling) Bill 2008  
Corporations and Financial Services Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

Dear Sirs

The Australasian Investor Relations Association would like to thank The Treasury for the opportunity to comment on its proposed new regulations surrounding the disclosure of short positions.

**Introduction:**

The Australasian Investor Relations Association (AIRA) was formed with the object of advancing the awareness of and best practice in investor relations in Australasia and thereby improving the relationship between listed entities and the investment community. Among other aims, it seeks to act as a united voice for the investor relations community, in areas advancing professional standards, including in best practice disclosure. AIRA's 120 corporate members represent approximately two-thirds of the market capitalization listed on ASX.

AIRA members' key responsibilities to the boards of their companies include advising on capital movements in the company's shares, and on who owns or can influence those shares at any given moment.

AIRA therefore welcomes this Consultation and the opportunities it presents for the creation of appropriate disclosure rules around short selling. We believe that The Treasury has identified all the potential alternatives to achieve the objectives it has identified.

**Summary**, we support the Treasury's position that option two is the preferred solution. We would like to add four points:

1. Whilst the consultation is limited to covered short selling, we continue to believe that *naked* short selling, with its opportunities for manipulators and potential for failed trades, should be outlawed. We would like to see the existing temporary ban made permanent.
2. We support the continuance of the uptick rule,
3. We would like to see increased disclosure of stock lending positions, to add transparency in dividend arbitrage and other non-shorting related uses.

In our response dated 24<sup>th</sup> April 2008 to the consultation paper issued by the Australian Stock Exchange, AIRA made some general comments clarifying its position on short selling – including both covered and naked. Briefly these were:

- AIRA views covered short selling as a legitimate technique which assists liquidity and is not in itself abusive. However the absence of transparency can give companies and the market a false and misleading impression of supply and demand in the securities concerned, and lead to potential market abuse.
- AIRA is a strong believer in the principle of transparency of market – and corporate - information. All participants in the market (issuers, brokers, investors) should be able to see the true level of short selling that is occurring in the market.
- **AIRA believes that naked short selling detracts from the legitimate advantages of short selling and should be outlawed.** The prohibition on naked short selling introduced as a temporary measure on September 22<sup>nd</sup>, should be made permanent.

AIRA continues to support these positions, and consequently welcomes the Treasury's consultation, and its conclusion that increased transparency of the activity of covered short sellers is needed.

We largely support the analysis of the options presented. Options one and five (respectively to retain the status quo and to undertake a full review of the short selling regime) will not address the identified urgent need for greater transparency.

Option four (disclosure of stock lending positions) seeks to correlate stock lending and short selling. AIRA does not believe that all stock lending is linked to short selling, and consequently any disclosures made as a proxy for short selling would serve to confuse, rather than inform, the market.

Nonetheless, stock lending positions should be disclosed to ensure transparency of other transactions such as dividend capture programmes, which if large can serve to mislead the market when the shares are returned. We note the successful use of CREST in the UK, where stock lending data is provided on a daily and monthly basis, and would welcome a similar initiative through CHES.

Options two and three identified by the Treasury will both achieve the objective, but at different costs to market participants. In regard to the analysis of the existing systems and data available to member firms, we find it curious that a broker firm with different trading desks can operate without an aggregated real time view of its exposure to the risks of a particular position. Reporting that view to the market operator may prove less costly than supposed.

Consequently, we believe that option 2 has the potential to maximise the transparency of the market, while minimising compliance costs. This would create an obligation on investors to disclose covered short sale transactions to their broker, who would then be responsible for reporting this information to the exchange. In our view this should be reported on a gross basis to achieve the maximum transparency. We would note however that any attempts to pass on increased costs to companies in the form, for example, of increased listing fees should be resisted.

The major concern, as always lies in the detail of the 'supplementary regulations' defining the technical aspects of the disclosure. In principle, AIRA would prefer for the supplementary regulations to provide for real time disclosure of short positions (coherent therefore with reporting of transactions connected to long positions) and consequently for disclosure of gross positions.

In regard to the uptick rule, we believe that this should be retained as a deterrent to bear attacks, and unsustainable volatility.

Finally we would like to clarify our view that related securities such as preference shares, convertible instruments, and 'derivatives' – in its most generic sense, but including CFD's – should be included in the disclosure obligations on investors.

AIRA is happy as always to provide any clarification needed, and indeed to advise on the detailed regulations.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Matheson', with a horizontal line underneath.

Ian Matheson  
Chief Executive Officer