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

By email: shortsellingbill@treasury.gov.au

Exposure Draft of the Corporations Amendment (Short Selling) Bill 2008

CSA is the peak professional body delivering accredited education and the most practical and authoritative training and information on governance, as well as thought leadership in the field. We represent over 8,000 governance professionals working in public and private companies. Our members have primary responsibility in listed companies to deal with the Australian Securities Exchange (ASX) and interpret and implement the Listing Rules. Our members have a thorough working knowledge of the operations of the markets, the needs of investors and the Listing Rules, as well as compliance with the Corporations Act (the Act). We have drawn on their experience in our submission on the Exposure Draft of the Corporations Amendment (Short Selling) Bill 2008 (the Bill).

CSA welcomes the Bill and supports the government's proposal to legislate to increase transparency surrounding the activity of covered short sellers in Australian securities. CSA agrees with the government that higher levels of information to the market concerning covered short sales will assist in keeping the market informed, which in turn may reduce the opportunities for market abuse, as well as enhance investor willingness to participate in the market by removing uncertainty surrounding the level of short selling. CSA agrees with the government that appropriately regulated short selling can enhance market liquidity and price discovery. The recent ban on short selling has also clarified that short selling facilitates a number of important strategies such as market making, arbitrage, and the underwriting of capital raisings and CSA agrees that there is no need to ban short selling.

CSA recommendations

CSA recommends that:

- Option 2 be introduced, which involves placing an obligation on investors to disclose covered short sale transactions to their broker, with the broker in turn being responsible to report this information to the market operator
- the government review the short selling regime at the close of the two-year sunset clause (a variant of Option 5), to assess not only if the legislative changes have addressed the perceived problems with short selling as intended, and that the benefits of the new regulation outweigh the costs imposed in introducing it, but also whether any disclosure of stock lending is required.

These recommendations are dealt with in greater detail below.

Option 2: Disclosure of covered short sales to brokers

CSA supports the government's preferred option, Option 2, which involves investors being required by law to advise their broker of covered short sales so that the information in relation to each security can be aggregated and disseminated to market users to assist with pricing efficiency.

CSA believes that disclosure and reporting as set out in Option 2 will ensure an efficient and fair market, provide confidence to investors and also facilitate the identification of market abuse by regulators.

In relation to timing, CSA notes that the more 'real time' the disclosure, the more certainty there is that the market will be fairly informed.

CSA notes that investors have expressed concern that they could potentially lose confidentiality in relation to their trading activities. However, CSA believes that the aggregation of this information forestalls the risk of investors' trading patterns being identified and that this option, therefore, will not breach confidentiality in relation to investor trading activities. On this basis, CSA does not support delayed disclosure.

CSA recommends that Option 2 be introduced.

Regulatory costs

CSA notes that Option 2 will involve some regulatory costs, particularly for brokers and large investors that are required to update their existing systems to facilitate reporting of covered short sale transactions.

CSA therefore recommends that financial intermediaries are provided with adequate time to implement the systems and processes that will need to be made to introduce the additional disclosure requirements inherent in Option 2.

Duties of brokers in regard to client information

CSA notes that brokers currently have duties not to use client information in their own principal trading or to pass client information to other clients.

CSA recommends that any legislative and regulatory reform introducing Option 2 clarify that these current obligations extend to any information received by brokers in relation to short selling.

CSA's position on other options put forward for consideration

CSA does *not* believe that the following options are suitable to achieve the government's objectives.

Option 1: Retain the status quo

This option does not provide for the higher levels of information to investors that is necessary to ensure efficient and fair markets.

Option 3: Direct disclosure of covered short sales to the market operator

Given the volume of trading on the Australian market, this option could result in the market operator being swamped with such a significant number of notices that the market operator could not digest the disclosure sufficiently quickly to ensure an informed market. Moreover, CSA believes that this option could result in non-compliance. CSA notes that many offshore investors

would be unlikely to be aware of the disclosure obligation, and that enforcement, particularly in relation to offshore investors, would prove difficult. CSA also has strong concerns that individual investor confidentiality is at risk of being breached under this option, with individual notices rather than aggregated notices more likely to potentially disclose individual trading patterns.

Option 4: Disclosure of stock lending transactions

CSA does not believe that securities lending data alone is a good proxy for short selling data, and does not support it being considered as a replacement for short selling data. Securities lending can be affected by dividend payments and potential settlement failures, as well as by short selling. The on-market purchase of securities or the exercise of a derivative can also satisfy a short sale position with no stock lending taking place.

Option 5: Review existing short selling regime

CSA notes that the government intends to formally review the new legislative and regulatory measures once they have been in operation for two years. CSA commends the government for ensuring that a sunset clause is attached to the legislation.

Given that the legislative and regulatory measures will be reviewed in two years, **CSA recommends** that a more holistic review of the short selling regime take place at that time. The review could assess:

- if the legislative changes have achieved the objectives of the legislation to improve the fairness and efficiency of the market
- if the benefits outweigh the costs.

The review could also examine stock lending arrangements to ensure that markets are fully informed, transparent and free of market manipulation. CSA notes the importance of superannuation to the Australian economy and the retirement incomes of the Australian population. With superannuation a long-term investment, there needs to be certainty that stock lending arrangements do not unduly place at risk the long-term value of that investment. CSA believes that the Bill, in addressing the gap in disclosure in short selling, will clarify at the time of a review whether stock lending arrangements should also be subject to market disclosure requirements.

Consideration of the disclosure of margin loans

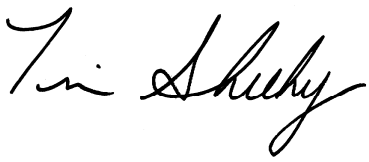
CSA does not believe that any consideration of the regulatory framework in relation to short selling can be undertaken without consideration of the regulatory framework in relation to the disclosure of shareholdings subject to security interest or other third-party rights. CSA believes that a holistic solution is required, given the degree to which these issues are meshed.

CSA recommends s 205G of the Corporations Act be amended to impose a statutory obligation on directors to notify the company of security and other third-party interests affecting shares in which they have a substantial relevant interest and for the company to notify the market of those interests.

Conclusion

When preparing this submission, CSA drew in particular on the expertise of its national Legislation Review Committee, comprising members working in listed companies with the responsibility to interpret the Listing Rules and ensure that continuous disclosure obligations are met.

Yours sincerely



Tim Sheehy
CHIEF EXECUTIVE