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**Instinet Pacific Limited
Comments and Submissions on Exposure Draft of the
Corporations Amendment (Short Selling) Bill 2008
21 October 2008**

Instinet Pacific Limited (Instinet) is pleased to provide submissions and comment to Treasury in relation to the Exposure Draft of the Corporations Amendment (Short Selling) Bill 2008.

About Instinet

Instinet is a remote participant of the Australian Stock Exchange. It is based in Hong Kong and is licensed by the Hong Kong Securities and Futures Commission. It has been granted relief by the Australian Securities and Investment Commission from holding an AFSL in relation to its business activities as a remote participant of the ASX.

Instinet is an electronic trading pioneer, having established the world's first significant electronic trading venue in 1969, one of the first recognized U.S. ECNs in 1997 and the first pan-European MTF in 2007. Through its affiliates, Instinet operates a global network of agency-only brokers that seek to help institutions lower overall trading costs and improve investment performance through the use of innovative electronic trading products, including smart-routing, algorithms, DMA, dark pools and EMS platforms, and also provide sales trading, commission management services and independent research. Instinet is a wholly-owned subsidiary of Nomura Holdings, Inc. For more information, please visit www.instinet.com.

ASIC Requests for Commentary on Bill

Instinet has had the benefit of hearing from representatives of ASIC at various meetings involving the Securities and Derivatives Industry Association (SDIA) and the FIX Protocol Limited (FPL) organisation. Instinet understands from the comments provided by ASIC that there are certain areas of the Bill and the proposed but as yet undrafted Regulations that ASIC would like market participants to focus on in providing their comments about the proposed Bill. Instinet has, therefore, addressed the issues raised by ASIC as follows:

Should Short Selling be Permitted?

Instinet believes that short selling should be permitted but only covered short selling integrated into a more transparent disclosure regime.

Naked short selling should not be permitted as it undermines market integrity and has the ability to contribute to an increase in the amount of trades that fail.

There should be exceptions and/or automatic relief available for non-typical short selling activity such as error trades, dual listed entities and ADR Arbitrage transactions.

The current Bill does not make it clear how a covered short sale will be defined. Presumably this will be done by way of regulation.

In relation to stock-lending, to make a sale before confirming that a borrow can be effected in relation to the security is a naked short sale. If a client is able to put a Locate in place prior to the sale, then this should be regarded as a covered short sale.

Disclosure of Short Sales

Instinet is in favour of greater transparency in relation to short selling in the Australian market. Disclosure should be real-time with each trade. This approach is in line with the suggestions of ASX as outlined in their recent position paper.

Some participants have questioned whether this is feasible and whether the system costs could be too large to make such disclosure practical. As a member of the FIX Protocol Organisation (FPL), Instinet has had discussions with ASIC in relation to the way in which this reporting could be achieved without substantial additional cost to participants. The FIX system currently supports such tagging of orders as they are placed in the market, using Tag 54. This also accommodates DMA clients. FPL has made direct contact with ASIC in relation to these proposals.

The market operator should then collect and collate the short sale data and post it following the close of that day's trading or at T+1.

Duty of Disclosure

The temporary measures in relation to short selling introduced by ASIC on 19 and 21 September 2008 highlighted the question as to who it should be that has the onus to report a short sale.

The temporary measures seemed to require a broker to ask their client if a sale was short at the time each order was placed.

This is an overly burdensome requirement for brokers, particularly when they are dealing with offshore clients who may be placing orders in different time zones to the broker. A requirement that clients be informed of the rules surrounding short selling and that they must tag an order as a short sale as it is placed is sufficient to cover this requirement efficiently. Presently clients are advised of the Rules of the ASX and their attention is usually drawn to several specific Rules in order to assist them in their duties of compliance. It would not be overly burdensome to require particular disclosure of the tagging requirement in relation to covered short sales that we have suggested.

Offshore Entities

As a remote participant and institutional agency broker, a substantial part of Instinet's business is from offshore clients. Offshore activity on the Australian market and particularly in relation to short selling makes up a large proportion of the Australian market turnover. The legislative and regulatory approach taken in relation to the short

selling regime in Australia must be mindful of this significant offshore volume and drafted accordingly.

The disclosure of short sales must come through the broker and from the client having provided the relevant tagging (Tag 54 in FIX), or other identifier when the sale is made. As a significant number of offshore entities are involved in the Australian market, there is a risk that mandating that other parties such as prime brokers, stock lenders or other parties be involved in the disclosure will be entirely ineffective. Many of these entities will be beyond the regulatory reach of the Australian regulators.

Summary

In is Instinet's view that the following are the essential elements of a workable regime around short selling in the Australian market:

- Covered short selling should be permitted;
- Naked short selling should not be permitted;
- Clients should be told of their disclosure requirements once and then relied upon to identify short sales as they occur;
- Orders should be tagged through FIX and other EMSs to disclose short sales in real time as the transactions take place; and,
- The market operator should collect this information in real time but disclose it to the market following the close of the trading day.

Conclusion

Instinet would be happy to provide further information in relation to its submissions and be involved in any consultation with participants that would be useful to Treasury and to ASIC.

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