

21 October 2008

Manager, Market Integrity Unit
Corporations and Financial Services Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Sir

**Re: Corporations Amendment
(Short Selling) Bill 2008**

We welcome the opportunity to comment on the Exposure Draft.

In general, we support the Bill.

However, we wish to make the following points:

1. Naked short selling

- we believe this should continue to be banned. Allowing it only increases speculation. We understand naked short selling has been banned in Hong Kong for over ten years;

2. Covered short selling

- we agree in normal conditions such short selling can add to efficient operation of the market by improving market liquidity and enhancing pricing efficiency. ASIC should retain the right to either temporarily ban or restrict covered short selling in abnormal times;
- to lessen speculation, covered short selling should only be permitted where through existing ownership or securities lending, the seller has a “presently exercisable and unconditional right” per the current provisions of the Corporations Act to sell the shares. In terms of securities lending, this would require entry into an Australian Master Securities Lending Agreement before the sale occurs ie not after the sale but prior to delivery. Further, there should be specifically allocated borrowings under such agreement prior to sale (rather than afterwards). This is to be sure of there being a “presently exercisable and unconditional right”;
- we think commonsense indicates the “up-tick” rule (precluding short selling at a price lower than the previous sale price) lessens speculation. Accordingly, the Bill should include this rule (arguably it does not apply to covered short sales involving specifically allocated borrowing under the current provisions of the Corporations Act);
- given their role due to the vast majority of shares sales in Australia occurring on ASX, investors should disclose covered short sales to their brokers and brokers in turn to ASX. This is consistent with other broker reporting to ASX. Hence there

QBE INSURANCE GROUP LIMITED
ABN 28 008 485 014

Head Office
82 Pitt Street
Sydney NSW 2000
AUSTRALIA

Postal Address
GPO Box 82
Sydney NSW 2001
AUSTRALIA

Telephone: +61 (2) 9375 4444
Facsimile: +61 (2) 9231 6104
DX 10171 Sydney Stock Exchange



- should be a positive obligation on brokers to inquire if a sale is a short sale;
- net disclosure is more useful than gross disclosure as the former offsets transactions;
 - for practicality, net disclosure at the end of a trading day is better than during the day. Disclosure on the day of sale should occur rather than the day of settlement to minimise opportunities for market abuse and so increase investor certainty;
 - similarly, disclosure to one broker should be sufficient for all an investor's covered sales to the extent an investor uses more than one broker during the day, since the information will be published on an aggregated basis by ASX;
 - we doubt off market short sales are important now or post Bill would be significant. Accordingly, we see no need to legislate in respect of them, although the regulation making power should be wide enough to encompass off market short sales if required.
 - we are not aware to what extent (if any) either a borrower or a lender under a securities lending arrangement can vest title in a third party. We agree such a third party should be subject to the proposed disclosure requirements, to minimise any loophole. We see this as more important than legislating for off market sales;
 - requiring disclosure below a low threshold of a company's issued shares is administratively sensible (however, a threshold of 0.1% is preferable as it would take more than 50 investors together to add to 5%, rather than more than twenty investors if the threshold was 0.25%);
 - we agree reporting mechanics should be dealt with by regulation rather than in the legislation itself so as to allow flexibility to respond to market and other factors;
 - as a cross check (albeit not complete) on short selling, securities lending should also be reported. We encourage the ASX and RBA to amend CHES and other rules to be consistent so far as practicable with short selling disclosure obligations; and

3. Superannuation trustees

- we consider the Superannuation Industry (Supervision) Act 1993 should be amended to require trustees to approve securities lending by their plans, especially of public offer funds given their size. We query how many trustees have considered the cost benefit of whether the fee from securities lending justifies the effect short selling can have on their investments.

Yours faithfully

John Cloney
Chairman