



Investment & Financial Services Association Ltd



AUSTRALIAN BANKERS' ASSOCIATION



19 December 2008

Senator the Hon. Nick Sherry  
Minister for Superannuation and  
Corporate Law  
Parliament House  
CANBERRA ACT 2600

Mr Tony D'Aloisio  
Chairman  
Australian Securities and Investments Commission  
Level 18, 1 Martin Place  
SYDNEY NSW 2000

Dear Minister and Chairman

**Re: Permanent short selling disclosure and reporting framework**

We write to you concerning the Government's proposed permanent short selling disclosure and reporting framework.

Short-selling is a long established investment activity and an integral part of global capital markets. Short selling plays a crucial role in legitimate active investment strategies and risk management activities designed to enhance performance and maximise returns to investors. It also contributes to market liquidity, reduces transaction costs and assists to ensure pricing efficiency.

We support improved transparency of short selling practices and enhanced disclosure of short selling activities. We believe that sound practices and meaningful disclosure of short sales will increase investor confidence, promote market efficiency and enhance the competitiveness of Australia's banking and finance sector and economy as a whole.

An enhanced disclosure regime should seek to improve the availability and understanding of short selling data. It is essential that short selling data predominantly facilitate market surveillance and confidence. It is also important that the permanent short selling regulatory regime be seen both in Australia and offshore as a balanced approach to this issue and does not limit short selling. Failure to uphold these objectives would not be a good signal in the region and hinder Australia's pursuit to be a regional financial services centre.

Preferred approach

We recognise that useful and usable data for regulators and market supervisors may differ from that most meaningful for the market. Therefore, we support the following two approaches to enhancing disclosure of short selling data.

## 1. Transaction data

We accept that ASIC considers access to transaction short sale data (gross data) is of significant value for market surveillance and compliance monitoring purposes. We also accept that collection of transaction data by real time tagging through broker order systems for transmission to the market operator is the most realistic way to gather such data, although it does impose an additional cost burden on the industry. It should be noted however that gross reporting of daily short sales fails to provide for assessment of the total short position as it does not take account of short sales that have been closed intraday.

However, to address concerns with confidentiality of client information, we believe that it is imperative that system changes involve hiding the sell-type field in Direct Market Access and other automated order systems. While this technical solution will address investor concerns with confidentiality to a certain extent, it is also desirable for ASIC to reinforce a compliance message to brokers and other market participants about their existing legal obligations with regard to client confidentiality.

It is our view that transaction data requires interpretation and correlation with other sources of information to avoid misleading conclusions to be drawn from it. Accordingly, it is our view that while transaction data should be available to ASIC and market operators it should not be made publicly available in the manner that is currently occurring. This view should be read in the context of the following comments on publicly reporting position data in an appropriate form.

## 2. Position data

The market would benefit from information about trends in short selling as a contributor to better understand the true nature and contribution that it makes to market efficiency and liquidity. Short selling position data would assist investors and shareholders better understand the nature of aggregate supply/demand factors that may affect the pricing of shares. Such information may assist investors to better identify situations where other investors have identified an over pricing of a company's shares. Enhancing market transparency in this way should promote investor confidence.

We support public disclosure of net position short sale data aggregated on an individual stock basis by investors and market participants directly to the ASX/market operator. We believe that further consideration should be given to the merit of incorporating some form of threshold to limit the compliance burden on retail investors.

Regulations should include either:

- 'De minimis' exception; or
- 'Substantial or significant' threshold.

The ASX/market operator should disclose net short sale position data on a periodic basis. Given that the law applies to sales made on a licensed market and sales that occur through on or off-market crossings, it is important for investors and market participants to be provided with adequate time to aggregate data and ensure high quality and accurate data is reported to the market.

We believe that given net position data can only be determined on settlement (T+3), it is reasonable for net position short sales data to be disclosed to the market on a bi-monthly basis. For example, we would envisage that a reporting cut-off date would be the end-of-trading day on every second Friday with net position data required to be disclosed to the ASX/market operator for the purposes of disseminating net short sale position data to the market with a small lag (i.e. T + 5). It should be noted that it is desirable for relevant regulatory obligations to be consistent with international reporting periods and aligned with international best practice.

Compliance costs

We note that the reporting obligations recommended above would require changes to systems and processes.

The transaction data requirement reflects the obligations being imposed by ASIC and the ASX. The net position data requirement would also require systems and process changes. It should be noted, however, that investors and market participants support the public disclosure of net position data and therefore accept that compliance costs will be inevitable with these new reporting requirements.

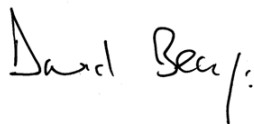
The financial services industry and investors will benefit from a diverse market that is robust to shocks, provides liquidity and has an internationally consistent regulatory framework. We believe that the measures recommended above will promote certainty and confidence in the Australian capital market, while also upholding its robustness and efficiency.

We would appreciate the opportunity to further discuss our views with the Government and ASIC to assist in facilitating the implementation of an enhanced disclosure regime for short selling. We would be grateful if you would contact IFSA on (02) 9299 3022 to schedule a meeting.

Yours sincerely



**Richard Gilbert**  
Chief Executive Officer  
Investment & Financial  
Services Association



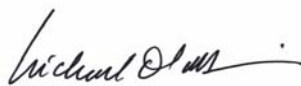
**David Bell**  
Chief Executive Officer  
Australian Bankers'  
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**Duncan Fairweather**  
Executive Director  
Australian Financial Markets Association



**John Currie**  
Chairman of  
Regulatory Committee  
and Honorary Counsel



**Michael O'Sullivan**  
President  
Australian Council of  
Superannuation  
Investors



**Bryan Gray**  
Chairman  
Australian Custodial Services Association

On behalf of  
**Kim Ivey**  
Chairman  
Alternative Investment  
Management  
Association

Cc: The Hon. Kevin Rudd MP  
Prime Minister

The Hon. Wayne Swan MP  
Treasurer

The Hon. Chris Bowen MP  
Assistant Treasurer and Minister for Competition Policy and Consumer Affairs