SECURITIES & DERIVATIVES INDUSTRY ASSOCIATION

Level 6, 56 Pitt Street
Sydney NSW 2000
P.O. Box R1461
Royal Exchange NSW 1225
Telephone: (61 2) 8080 3200
Facsimile: (61 2) 8080 3299
Email: info@sdia.org.au
Web: www.sdia.org.au
ABN 91 089 767 706

19 August 2009

Megan Manwaring
Senior Lawyer, Investment Banks
Australian Securities and Investments Commission
GPO Box 9827
Sydney NSW 2001

By email: Megan.Manwaring@asic.gov.au

Dear Ms Manwaring

ISSUES PAPER "IMPROVING AUSTRALIA'S FRAMEWORK FOR DISCLOSURE OF EQUITY DERIVATIVE PRODUCTS"
SUBMISSION BY SECURITIES & DERIVATIVES INDUSTRY ASSOCIATION (SDIA)

Introduction

The Securities & Derivatives Industry Association (SDIA) is the peak industry body representing institutional and retail stockbrokers and investment banks in Australia. Its 67 members account for 98% of market turnover by value. SDIA is pleased to provide this submission to ASIC in relation to Consultation Paper CP 107 "Securities Lending and Substantial Shareholding Disclosure.

SDIA's members have a strong commitment to maintaining the integrity and high standing of Australia's securities market. We support the existence of a sound regulatory framework for the disclosure of substantial holdings of listed companies and managed investment schemes as a valuable element of maintaining the high standing enjoyed by the Australian market and the continuation of investor confidence.

SDIA welcomes ASIC's decision to propose relief in relation to certain of the substantial shareholding requirements as they relate to stock borrowing/lending and prime broking. SDIA's view is that, whilst a positive first step, the relief proposed does not however go far enough.

We note that the list of specific questions set out in CP 107 indicate a thorough review of the application of the substantial shareholding provisions to these two businesses. We believe that a thorough review is overdue, and that detailed consideration of these issues will support the conclusion that there are a number of the strict requirements of the substantial shareholder provisions that simply do not sit with the nature of stock borrowing/lending and prime broking transactions, and generate little or no information which is of relevance to the control of corporations or managed investment schemes. Compliance with the full requirements of the substantial shareholding provisions in many instances creates a considerable level of practical difficulty and compliance burden, without any corresponding regulatory benefit.

SDIA supports the granting of more extensive relief from the requirements under the substantial shareholding provisions in relation to stock borrowing/lending and prime broking.

We have preferred to set out a number of submissions relating to the appropriate form of the substantial shareholder requirements, and appropriate relief, relevant to stock borrowing/lending and prime broking on a preliminary basis, before later addressing each of the specific questions contained in CP 107.

A. Preliminary Comments

A.1. We stress at the outset that the objectives of the substantial shareholding provisions should not be confused with the objectives of the short selling and securities lending disclosure requirements. The latter have already been the subject of extensive review on a number of levels since the events of September 2008, as a result of which specific disclosure obligations have been, or are in the course of being, introduced. Those measures should result in the market receiving much clearer information about the level of short selling and stock lending in relation to listed securities.

A.2. The objectives of the substantial shareholding provisions on the other hand are focused on ensuring that the market is sufficiently informed regarding control transactions in listed entities.

A.3. We note in Section A of CP 107 at parag. 3(a) the statement that "..*disclosure achieves transparency of the volume of a company's securities that are subject to these activities. This is relevant for indentifying pricing pressures and prospective settlement failures in those securities*." SDIA submits that this

suggests an element of confusion of the objectives of stock lending and short selling disclosure with those of the substantial shareholding provisions. The information arising from substantial shareholding disclosure in relation to stock lending and prime broking will not give any reliable information to assist with transparency of volume and with pricing pressures, nor was it intended for that purpose.

A.4. In our submission, information about the amount of stock borrowed, the amount of stock that is under Prime Broking arrangements, and the daily movements in relation to these, provides little significant information regarding corporate control either. We do not believe that the market attaches any significance to such information (to the extent that the information is actually being disclosed at present).

A.5. In this regard, we note that there appears to be some degree of confusion as to the extent to which parties are obliged to provide this information in substantial shareholding notices, and there appears to be historically a high degree of incomplete compliance with these provisions (without any apparent concern by the market). As we will set out later, strict compliance with the letter of the substantial shareholding requirements in respect of stock lending and prime broking involves a considerable degree of practical difficulty (and in some cases, impossibility) without there being any corresponding regulatory benefit.

A.6. Stock lending has been in existence since the substantial shareholding requirements were introduced, however, the volume of stock lending has increased considerably in more recent times, particularly in connection with the growth of short selling and risk management by way of hedging. Prime broking is entirely an innovation of the last decade.

A.7. The substantial shareholding provisions were not drafted with these particular businesses in mind, and the detail of the provisions does not sit well with the nature of these businesses. The substantial shareholding provisions have not been reviewed and adapted to suit those practices in recent times.

A.8. We would also note that a substantial additional burden of reporting has in recent times fallen in particular onto stockbrokers. The short selling and stock lending reporting disclosure regimes that are in the course of implementation have involved substantial system changes to be implemented by stockbrokers, and added a substantial additional day-to-day reporting burden. Added to this is the further potential for changes arising from the Treasury review of Equity Derivatives Disclosure that is currently under way.

A.9. SDIA submits that it will assist in managing the burden of reporting, thereby assisting in maintaining an efficient market and reducing the cost of providing services to investors, if opportunities are taken to provide appropriate relief from reporting requirements in other areas where it can be demonstrated that these

requirements achieve little purpose and do not facilitate avoidance or warehousing. The relief which SDIA suggests in relation to stock borrowing and prime broking are an example of such an opportunity.

A.10. We note that there have been recent prominent cases involving stock lending and margin lending arrangements where market participants have failed and investors have lost money. SDIA is not in a position to comment on the extent to which there may or may not have been compliance with the substantial shareholding requirements in relation to securities that were involved in those arrangements.

A.11. To the extent that there may have been regulatory failure in those cases, it would appear that the main concerns relate to disclosure to investors, and did not stem from any failure that may have occurred to disclose substantial shareholdings arising from stock lending arrangements. These cases do not represent in our view a strong argument for stricter enforcement of the substantial shareholding provisions in relation to stock lending or prime broking.

B. STOCK BORROWING AND LENDING

1. Relief for annexing copies of Agreements

B.1. SDIA supports ASIC's proposed relief dispensing with the need to annex to every substantial shareholding notice a copy of each relevant stock lending agreement with each counterparty. As ASIC has correctly identified, these agreements are almost always in the form of the standardized ASLA/GMSLA. The standardized Overseas Lending Agreements (OSLAs) may also be used.

B.2. The strict requirement to lodge multiple copies of standardized agreements is onerous and involves unnecessary duplication. It significantly complicates the burden of disclosure and is more inclined to confuse rather than provide clear information. We understand that annexure of multiple ASLA's to substantial shareholding notices has been resisted by the ASX's disclosure platform, on which all substantial shareholding are filed, on the grounds of the difficulty in accommodating a large volume of duplicated attachments clogging up the platform.

2. Additional Information/Schedules

B.3. We do not support the proposed conditions requiring disclosure of the Schedules to each agreement or of a summary of the key terms, as proposed in CP 107. The terms of a securities lending agreement are not of any relevance to the question of control of the relevant corporation, other than the terms giving the Borrower the right to return and giving the Lender the right to recall the securities. It should be sufficient for the purposes of informing the market for there to be a reference to these obligations incorporated into a substantial shareholding notice in a general way, as is currently a common practice.

B.4. It should not be necessary for there to be a requirement or condition that the remainder of the terms of a securities lending agreement be attached or summarized in the substantial shareholding notice.

3. Consideration

B.5. There should be no requirement to disclose the "consideration" in respect of a stock lending transaction. The consideration in this case does not bear any relationship to the price being paid for the acquisition or disposal of securities, and has no bearing on the calculation of a premium for control or the price at which a takeover offer must be made.

B.6. A typical stock lending transaction will involve the lending of stock to a borrower, who will be obliged to lodge either cash or other securities as collateral for the borrowing. The borrower will receive a rate in return for the collateral lodged.

B.7. As the stock moves in value, the borrower will be required to lodge further cash or additional security (in the case of a fall in value) or receive a release (in the case of a rise in value) by way of adjustment of collateral. Hence, the price of the stock at the original date of borrow/lend, or on the date of return, cannot be regarded as consideration within the ordinary meaning of that term. Whilst that initial price on which the borrow was based on the date of borrow could be detailed in any Notice, this information would have no relevance for the purposes of informing the market in relation to a control transaction, and in fact is more likely to be misleading. The initial price is superseded by later changes in value.

B.8. The true consideration for a stock borrow is the margin charged for the borrow. That information is of no relevance to the question of corporate control and further, is highly sensitive commercial information. Disclosure of that information would be able to be used by competitors in the stock borrowing/lending business to their commercial advantage and to the detriment of the lender. The market does not have any basis for needing to know this information, either for substantial shareholding or for stock lending disclosure

reasons. It reflects information such as the lender's assumption of counterparty risk which is not relevant to the underlying security and control.

4. Section 671B (3)(e) – Size and Date of Movement

B.9. SDIA submits that relief should be granted dispensing with the present requirement under Section 671B (3)(e) to disclose the size and date of individual stock borrow/loan movements giving rise to the relevant interest in a substantial shareholding notice. It should be sufficient for the purposes of informing the market for the holder to disclose the overall amount of the relevant interest resulting from stock borrowing/lending on an end-of-day net basis, with stock lent out being netted against stock borrowed.

B.10. Each movement in borrowed stock does not represent the acquisition or disposal of a parcel of securities at a specified price in the conventional sense for the purposes of informing the market of the acquisition of control of the relevant corporation. Whilst there may be an argument that information about the overall net size of a holder's position in borrowed stock at a given time may have some relevance to the holder's ability to control securities in the corporation, information about each individual stock lending movement is not of any significance given the nature of stock lending transactions and the lack of relevance of consideration for the transaction already discussed above.

Hence, if the net end-of-day stocklending position of an entity is disclosed to the market, then there should not be any concerns that the relief which SDIA submits is appropriate will serve to facilitate warehousing or avoidance of the takeover positions, as the relevant information, namely the volume of stock over which the holder might be regarded as having some form of "control", will still be made known to the market disclosed.

B.11. Information about the full volume of line by line stock lending movements has the potential to confuse or misinform the market about control transactions. The volume of transactions and the routine nature of borrow and return transactions, will tend to overwhelm the market with "noise" rather than provide meaningful information.

B.12. Where a person borrows stock and then on-lends it, the person will not lose its relevant interest because they retain the right to recall the stock from the party to whom it has lent. We note ASIC's observation as a matter of law that the party may lose their relevant interest if the person to whom they have lent the stock subsequently disposes of it. We understand that there remains some argument as to whether this is the correct interpretation of the legislation. Notwithstanding this, the usual practice is for the person to err on the side of caution and assume that the counterparty has not disposed of the securities unless for some reason

the person has actual knowledge that they have been disposed of, and continue to report a relevant interest. This result further indicates the questionable nature of the information provided to the market in relation to stock lending movements, and the potential for the market to actually be misinformed or misled.

B.13. In the case of group companies, it will often be the case that one company in the group will borrow securities and on-lend to another company in the group. This will be the case where the company needing to borrow does not have an ASLA arrangement in place with the proposed lender, but another company in the group does. In this case, not only will the result be a duplication of reported movements, but also a duplication of the size of the relevant interest reported on aggregated basis by the group.

B.14. An entity carrying on a typical stock borrowing/lending business will commonly source stock from another lender if it does not have any on hand, and on-lend it to the parties seeking supply, capturing a differential margin as profit. This increases the number of movements in holding that would need to be reported, increasing the complexity of reporting. Those movements will quite usually be intra-day or overnight, so that the entity will only have a relevant interest for a short period of time.

B.15. Not uncommonly, a borrower of stock will be served with a recall notice by the lender, and will therefore be required to return the stock within the settlement cycle, but will also source the stock from another lender to replace the borrow. Detailing each of these line by line transactions in a substantial shareholding notice is likely to only be confusing to the market. Market practice tends to be for lenders to recall stock lent when there are material corporate actions or resolutions that arise. This further dilutes any benefit of an onerous monitoring regime.

B.16. Apart from the potentially misleading information generated by the application of these provisions, the complexity of the reporting of a high level of stock lending and stock return transactions creates significant practical, logistical and resource issues in endeavouring to achieve full compliance.

5. Counterparty

B.17. The counterparties to stock lending transactions will invariably be custodians or trustees who are the registered owners of the relevant securities. The market derives little benefit from disclosure of this information, and therefore there is nothing lost by providing relief from the requirement to disclose each individual movement in securities, nor is there anything to be gained by requiring

the disclosure of the counterparty to each transaction as a condition of providing any relief.

C. PRIME BROKING

C.1. Considerable issues of impracticality arise in relation to compliance with the letter of the substantial shareholding provisions in respect of interests under a Prime Broking arrangement. The information that is generated by this disclosure is also likely to be far more misleading to the market than informative as regards the true situation of control of corporations. Such issues have arisen with respect to trustees and custodians in the past.

C.2. SDIA's fundamental submission is that the right commonly included in Prime Broking agreements conferring on the Prime Broker the right to borrow securities from the Prime Broking client should be carved out from the substantial shareholding requirements completely. An obligation on the Prime Broker to disclose a relevant interest should only arise when the Prime Broker actually borrows stock or places a "foot" on the stock. In the latter event, substantial shareholding disclosure should be made in accordance with the rules relating to disclosure of stock borrowing/lending transactions described above.

C.3. In our overriding submission, the situation of a Prime Broker has direct analogies with the situation of a bare trustee, which has traditionally benefited from a carve-out under the substantial shareholding provisions. The two should in our view logically be treated the same way.

C.4. As indicated in CP 107, Prime Broking has developed as a relationship under which a Prime Broker provides a range of services to clients, including execution, custody, financing, stock lending and equity swap exposure. A prime Broking agreement will commonly give the Prime Broker the right to borrow or rehypothecate the client's securities for use in the Prime Broker's stock lending program, which as ASIC points out, is likely to have a relevant interest over all of that client's holdings in a stock. The client however retains all rights with respect to their stocks, including the right to vote, prior to their stock actually being borrowed by a Prime Broker.

C.5. The client is not obliged to conduct all its securities dealings through the one Prime Broker. Clients will often have more than one Prime Broking relationship, and in addition, institutional clients will usually have a panel of brokers that they may use for execution of trades.

C.6. SDIA submits that there are strong reasons why the technical requirements of the substantial shareholding provisions are not appropriate in respect of Prime

Broking, justifying relief by way of a general carve-out. These reasons are set out in the discussion below.

1. Section 671B(3)(e) – Size and Date of Movement

C.7. At present, the strict requirement under Section 671B(3)(e) of the Corps Act would mean that a Prime Broker must disclose purchases and sales in the preceding 4 months in the case of an Initial Substantial Shareholding Notice, or movements since the previous Notice, giving rise to the substantial shareholding.

C.8. The application of this requirement to PB is very problematic. The change in relevant interest on the part of the Prime Broker is constituted by the movement in the balance of the overall holdings in that security held under Prime Broking arrangements by the Prime Broker for all of its PB clients. The Prime Broker's relevant interest rises or falls based on the increase/decrease in the underlying clients holdings in the security that are subject to the PB relationship.

C.9. The individual transactions are those of the client(s), not the Prime Broker. There is actually no purchase and sale or any other transaction by the Prime Broker. The Prime Broker does not pay or receive any consideration relating to the movements.

C.10. The Prime Broker may well be aware of transactions by the client in cases where it has acted as executing broker on behalf of the client. However in other cases, the Prime Broker (and any other Prime Broker) will only become aware of a transaction when it is called upon to settle a transaction as custodian, delivering or accepting stock or funds, where the trade has been executed by a different broker. Otherwise, the Prime Broker might not be aware that the client has transacted at all.

C.11. In other cases, there may be a transfer by the client of stock out of the custody arrangement with the Prime Broker, but without there being any acquisition or disposal of the stock at all. Hence, the Prime Broker is often faced with real difficulties in knowing when, or what, it is required to disclose by way of transactions in the event of being required to lodge a substantial shareholding notice.

C.12. The amalgamation of holdings, which could represent a number of unrelated clients each with a small holding, and which come under a Prime Broking relationship, does not in any sense ever translate to effective control for takeover purposes.

C.13. For these reasons, the requirement to report prior movements of stock held by a Prime Broker is not an accurate reflection of any trading with respect to the security, and may in fact give a misleading appearance of activity in the security. Transactions by a Prime Broker should not be considered to be a matter of

significance to corporate control unless the Prime Broker were to actually effect a borrow. In that event, substantial shareholding disclosure should take effect within the rules applicable to stock borrowing /lending.

C.14. We are aware of instances in practice where the disclosure of relevant interests arising from Prime Broking arrangements has had the tendency to confuse some readers of Notices, who may have been led to attach a greater significance to the existence of the relationship than is the case. There have been instances where financial journalists have endeavoured to make sense of movements attributable only to Prime Broking movements as somehow reflecting control transactions, when that was not in fact the case.

C.15. A modification of the requirements would be of considerable benefit to the providers of Prime Brokerage services, including greater certainty and a reduction in the costs of doing business. Apart from the burden imposed on notifying parties in reporting the multitude of stock movements, as mentioned above, the requirement to disclose Prime Broking positions will often result in many more notices being lodged than should really be warranted by the circumstances. It is not uncommon for the reporting threshold to only be crossed because of Prime Broking positions, which may only be due to the fact of the number of prime broking clients that a broker has. Hence, notices may be lodged for this reason, sending misleading signals to the market, when in reality no reportable control situations have arisen.

C.16. There is also likely to be a rise in the frequency of Change of Interest notices, generated as a result of movements in client balances, when no reportable control events would otherwise have occurred. All of these events add significantly to the potential burden and cost of reporting.

C.17. Because of the lack of relevance of Prime Broking information to corporate control, SDIA's submission, as indicated earlier, is that there should be a general carve-out from the requirement to report in relation to relevant interests arising purely as a result of a Prime Broking relationship. Should this be declined for whatever reason, then there should at least be relief permitting a Prime Broker to report only the total number of securities subject to Prime Broking arrangements, and not the details of individual movements since the last Notice or in the preceding 4 months (as the case may be).

2. Relief for annexing copies of Agreements

C.18. For the same reasons as outlined above in relation to Securities Lending Agreements, the existing technical requirement that a copy of every Prime Broking agreement with every client who is a holder of the securities the subject of the notice be annexed to the notice is unnecessarily burdensome and

duplicative, and does not achieve any benefit in terms of informing the market about corporate control. Each document is lengthy, and in the nature of a standardized agreement. This result of this would be lodgement of a number of bulky identical or largely identical documents as annexures to each notice. Other than the term conferring the right to borrow the securities conferred on the Prime Broker, the rest of each agreement would be irrelevant.

C.19. The burden of locating and annexing a copy of each agreement is an administrative burden. Increasing the number of pages contained in the notice would, we submit, tend to confuse readers and cloud disclosure rather than enhance it.

C.20. If Prime Broking is not to be given the benefit of a carve-out from the substantial shareholding provisions, then there should at least be relief granted from the requirement to a copy of every prime broking and/or stock borrowing/lending agreements to each substantial shareholding notice.

SPECIFIC QUESTIONS IN CP 107

We will now address the specific questions in CP 107, with reference to submissions above that already deal with the subject matter of many of the questions.

Questions

C4Q1 Is our proposal to give relief from the requirement to lodge the AMSLA or GMSLA with substantial holding notices likely to make compliance with s671B easier?

We refer to paras. B.1 – B.2. above.

The proposed relief from the requirement to lodge the AMSLA or GMSLA with every notice would certainly make compliance with section 671B and with the obligation to answer tracing notices easier than at present. Consideration should be given to recognizing other standard industry documents including for example OSLAs.

However, as noted at in the Introductions and in section B generally, the relief should go further than that proposed and the conditions attached to the proposed relief are in our view not appropriate.

Questions

C4Q2 Should the notice be required to:

(a) summarise the key terms of the agreement, or

(b) be accompanied by a copy of the completed schedules?

We refer to paras. B.3 – B.8. amd para. B.17. There is no benefit to be gained from either (a) or (b) above to be included in the notice. It should be sufficient to disclose that the relevant interest is pursuant to an AMSLA or GMSLA The only terms that are relevant for inclusion are the borrower's right to return and the lender's right to recall stock, which could be referred to in general terms if required.

Questions

C4Q3 Is our proposal likely to result in the market being deprived of important information?

No. We refer to section B. generally.

Questions

C4Q4 Should relief from the requirement to attach copies of standard master agreements be conditional on the substantial holder providing the listed entity and the market with a copy if requested by an investor or the entity?

Given that the documents in question are standardized documents, we do not think such a condition is necessary. There is the potential that such a requirement could be open to overuse and even abuse and/or vexatious requests. We refer to current experience with respect to tracing notices, where requests on a highly frequent basis are often being served on an apparent routine basis without reference to particular events.

A better alternative may be to enable a holder to refer to a web address for a copy of the master agreements. If there is a requirement to furnish copies of agreements on request, there should be the ability for a holder to decline where it is reasonable to do so and in the case of vexatious requests.

Questions

C4Q5 Should we give relief for any other types of contracts or arrangements that contribute to a person acquiring a substantial holding through securities lending transactions? For example, should we give relief so that prime broking arrangements, borrowing requests or notifications of unconditional 'holds' (binding legal commitments to lend securities) do not have to be attached?

We refer to section B and Section C above generally. There should be a general carve out for relevant interests arising from a Prime Broking relationship prior to the Prime Broker engaging in a stock borrow or otherwise "securing" the stock.

It should be clarified that a "conditional hold" as commonly understood should be exempted from the definition of a "relevant interest" and thereby not required to be disclosed. As ASIC would be aware, this mechanism has increased in its use during the last 12 months, as a means of remaining in compliance with short selling regulations. A conditional hold is commonly put in place without any subsequent stock borrowing being entered into, and requiring disclosure of these arrangements would only complicate substantial shareholding disclosures without any relevance to the question of corporate control.

The question of collateral should also be clarified and, if necessary, exempted from the substantial shareholding provisions by way of relief. It is noted at parag. 25 of CP 107 that ASIC expressed the view that a relevant interest is likely to be obtained by a lender over collateral securities. There appears to be some doubt as to whether this is correct or whether the financial accommodation exception in Section 609(1) of the Corporations Act would operate to exclude any relevant interest.

SDIA submits that if the exception does not apply, then it ought to as a matter of policy. There should be no difference between the treatment of collateral and the treatment of security for any other financial advance. We submit that it would appropriate for ASIC to issue relief to put this matter beyond doubt.

Questions

C5Q1 Will our proposed guidance be impractical or otherwise cause undue difficulties for the securities lending industry?

We refer to sections B and C above generally. The proposed guidance will be impractical and cause difficulty in the instances outlined unless modified in the manner in which we propose.

Questions

C5Q2 Is information about fees useful market information (e.g. as an indicator to supply and demand for borrowing and lending the securities), having regard to the purpose of the substantial holding disclosure regime?

We refer to paras. B.5 – B.8. above.

As we submit in those paragraphs, requiring information about fees does not provide information relevant to the objectives of the substantial shareholding provisions, and would be highly detrimental commercially to participants in the securities lending business. It could potentially impact on the willingness of parties to engage in securities lending, and thereby impact on the availability of borrowed stock. This could impact on a wide range of activities, most particularly hedging and market making, which would adversely impact on the financial and securities markets.

Questions

C5Q3 What information about consideration for securities lending transactions is useful for the market, having regard to the purpose of the substantial holding disclosure regime?

We refer to paras. B.5 – B.8 above and to the preceding question. There is no information regarding consideration that is relevant to the objectives of the substantial shareholding regime.

Questions

C6Q1 Will our proposed guidance be impractical or otherwise cause undue difficulties for the securities lending and prime broking sectors?

We refer to Sections B and C above. There will be impracticalities and difficulties as outlined in those sections.

Questions

C6Q2 Is information about the registered holder of the shares (in respect of which the relevant interest is disclosed) useful market information?

We refer to para. B.17. We believe not.

Questions

C6Q3 What information on the registered holder of the relevant shares for prime broking or securities lending transactions is useful for the market?

We refer to Section C above. We submit that there is no information in relation to prime broking relationships that is relevant to the issue of corporate control, prior to a Prime Broker engaging in a stock borrowing. At that point, any disclosure should be in accordance with the requirements relating to stock borrowing. As regards information about the registered holder, we refer to the preceding question and to para. B.17. An underlying beneficial owner with a substantial position in a security will have its separate obligation to report to the market, and hence the market will not be deprived of the information that is relevant.

Questions

C7Q1 What information on substantial holdings acquired through securities lending transactions is important for the market?

We refer to para. B.9. above.

Questions

C7Q2 What information on substantial holdings acquired through prime broking arrangements is important for the market?

We refer to Section C above. We submit that there is no information in relation to prime broking relationships that is relevant to the issue of corporate control, prior to a Prime Broker engaging in a stock borrowing.

Questions

C7Q3 Are there any aspects of our guidance on relevant interests in Section B that are inconsistent with how securities lending transactions occur? If so, should we give any relief?

We refer to Section B of our submission generally.

Questions

C7Q4 Are there any aspects of the substantial holding disclosure requirements that are inappropriate for securities lending transactions and if so, how should they be changed?

We refer to Section B of our submission generally.

Questions

C7Q5 Are there any aspects of the substantial holding disclosure requirements that are inappropriate for prime broking arrangements and if so, how should they be changed? For instance, what consequences would you see if ASIC provided relief so that the prime broker's relevant interest arising from its right to borrow or rehypothecate its client's securities could be disregarded (for substantial holding disclosure) until the time when the prime broker exercises that right?

We refer to Section C of our submission generally.

Questions

C7Q6 Do you have suggestions for specific relief that ASIC should consider that would improve compliance with the provisions while still:

(a) achieving market transparency of substantial holdings; and

(b) mitigating the risk of avoidance or the risk of warehousing?

Other than as set out in Sections B and C above, no.

Questions

C7Q7 If ASIC were to simplify the requirements for securities lending (e.g. to allow the non-inclusion in substantial holding calculations of borrowed securities that are on-lent or otherwise disposed of by the borrower by T+1), how would this not:

(a) compromise market transparency; and

(b) increase the risk of avoidance or the risk of warehousing?

We refer to Section B above. A simplification such as this would not compromise market transparency, as it would eliminate a significant proportion of transactions having no bearing whatsoever in relation to corporate control from the requirement to be disclosed in a substantial shareholding notice. If anything, such a measure would add to market transparency, by eliminating a great deal of

"noise" and in all probability lead to less confusion in the market arising from a misunderstanding as to the significance of these transactions. If a party was seeking to warehouse securities, they would not be able to achieve this by on-lending or selling the securities within T+1.

Questions

C7Q8 Is the information gathered under the disclosure regimes for securities lending and short selling adequate for achieving disclosure of substantial holdings in a particular security through securities lending or prime broking? Why?

Our submissions on this are covered in the preceding material, and we refer to Sections B and C above generally.

We would be happy to discuss any issues relating to this matter at your convenience. Should you require any further information, please contact Peter Stepek, Policy Executive, on (02) 8080 3200 or email pstepek@sdia.org.au .

Yours sincerely,

David W Horsfield
Managing Director/CEO