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Mr Geoff Miller
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The Treasury
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By Email: consumercredit@treasury.gov.au

Dear Mr Miller

Corporations Legislation Amendment (Financial Services Modernisation) Bill 2009 - Margin Lending

As the peak industry body representing the interests of wholesale and retail stockbrokers and investment banks, the Securities & Derivatives Industry Association is ideally placed to present the views of a wide range of industry participants involved in margin lending.

SDIA would like to make the following comments on the Draft Regulations

1. Timing & Logistics

With the Bill and Regulations expected to be passed in the Spring sittings, with an implementation date of November (or possibly later), this will present severe logistical burdens for the whole industry – lenders and advisers – and their clients – in terms of the need for new:

- Client agreements
- Unsuitability Assessments
- Agreements between Licensed Intermediaries (stockbrokers/financial planners/advisers) and Margin Lenders
- Licence variations from ASIC, and
- Training retail advisers (RG146)

Many of the new changes will necessitate systems, procedural and operational changes. Heading into the Christmas/New Year holiday season, many firms impose freezes on systems developments, making it a particularly difficult time in which to implement new systems.

As well as this package, there are also a number of other significant reform matters happening, including short selling; unfair contracts, unsolicited trading etc so there is a growing logjam of reforms to implement which could occur at or around the same time.

Accordingly, we urge Government to **delay implementation** until at least the last quarter of calendar **2010**.

2. Increase in facility

For existing clients, an increase in facility triggers an unsuitability assessment.

Often, clients request increases in facilities in order to facilitate trading. If clients require these immediately, there should be some streamlined or time-critical exemption to allow the trade in accordance with client requirements. Chapter 7 already incorporates a **time-critical exemption** for Statements of Advice, so there is no reason why this should be any different. If such a facility is not implemented, opportunity cost claims will arise against the lender and/or adviser through not being able to fulfil their requirements.

3. Responsible Lending

In intermediary arrangements, there will be a practical and legal question about whether the Lender will be able to rely on the Adviser's SOA. The Question will come down to the contractual arrangements between Adviser and Lender. While the law will need to be flexible enough to encompass these various models, guidance would be appreciated as to the regulatory view of the respective roles and responsibility.

4. Transitional

- **Unsuitability Assessment:** during Transition, the Adviser must administer the Unsuitability Assessment, not the Lender. After Transition, it reverts to the Lender. It should be enough that the Adviser is including Margin Lending in the Suitability test as for all financial products. The Unsuitability should sit primarily with the Lender unless an arrangement exists to the contrary with the Adviser.
- **Training (RG146):** no accredited training is yet available. It is going to be very difficult to have courses developed and advisers accredited by November. We urge Government and ASIC to facilitate approvals or streamline arrangements so that a reasonable implementation period is permitted. (We note that ASIC has stated that there is to be a Consultation Paper released on updating RG146 shortly.)
- **Licensing:** amendments and variations to all licences will be necessary for those issuing or advising in margin lending, which will be most of our Members, and hundreds if not thousands of licensees across the industry. ASIC implemented an effective streamlining process in the lead up to re-licensing under FSR. We urge ASIC to streamline the necessary arrangements to facilitate the licence variation process.

SDIA appreciates the opportunity to participate in the consultation process, both as part of the Treasury Consultation Working Groups, and in providing these comments.

Yours sincerely,



David W Horsfield
Managing Director/CEO