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ASFA COMMENTS ON ISSUES OUTLINED IN THE SHORT SELLING ASX CONSULTATION PAPER

The Association of Superannuation Funds of Australia Ltd (ASFA) is pleased to provide comments on issues outlined in the ASX Consultation Paper on Short Selling regarding some possible short term responses pending possible legislative changes.

ASFA is a non-profit, non-political national organisation whose mission is to protect, promote and advance the interests of Australia's superannuation funds, their trustees and their members. Our members, which include corporate, public sector, industry and retail superannuation funds, account for more than 5.7 million member accounts and over 80% of superannuation savings.

ASFA as a matter of principle supports greater transparency in the reporting of all short sales as well as the enhancement of participants' recognition and control of the risks inherent in stock lending. ASFA would support amendments to the Corporations Act to require reporting of all sales where borrowing takes place in order to meet settlement obligations. That said, ASFA supports funds (and other investors) being able to lend stock when they consider that it is appropriate to do so on the basis of the risk and return profile of the transaction.

ASFA's specific comments on issues in the ASX Consultation Paper are as follows:

Two alternative short term approaches considered by ASX

ASFA agrees with the ASX view of not proceeding with the outlined options at this stage. The provision of data on stock lending in the absence of data on covered short sales may lead to some market participants to assume a close correlation between the two measures even though this appears not to be the case. However, should legislative changes result in the reporting of covered short sales then transparency would be enhanced if reporting of the level of stock lending was introduced at that stage. As well there would be little point in the ASX introducing requirements for clients informing brokers which were essentially unenforceable.

What information should be included in the daily short sale report submitted to the ASX?

The main aims of reporting short sales are to enhance supervision of market activity and to assist in enhancing market efficiency and price formation. To this end it appears that reporting net naked and net other short sales would provide more information than is currently available. Reporting both gross and net would provide more information but the additional reporting obligations relating to intra-day positions which had been closed out

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during the day would do little to address the main market concerns of the information available in regard to the extent of short selling in specific stocks. ASFA agrees that a net position does not mean that a short position of one client or the Participant as principal is netted against a long position of another client or the Participant for reporting purposes.

What information should be included in the daily short sale report published by ASX?

In the absence of any arguments to the contrary, ASFA suggests that the current timing for reporting and publication of short sales be used. That is, short sold positions should be reported daily for disclosure to the market the next day. Further, there appears to be no clear reasons for the ASX to provide a split of net naked and net other short sales to the market. Therefore we suggest that it would be sufficient for the ASX to report net short sale positions on an aggregated basis.

Whether the Approved List current market capitalisation and liquidity tests remain relevant?

The paper states that there has been relatively little change to the market capitalisation and liquidity tests since their introduction in 1985. Accordingly there will have a de facto easing of the thresholds with growth in market capitalisations since that time.

While there may be a case for a less restrictive approach to be taken on the basis of the greater liquidity and efficiency in price discovery this might bring, the possibility of market manipulation and/or settlement failure in regard to the short selling of stocks in companies with relatively low market capitalisation needs to be considered. Therefore, before any action is taken in this regard further work should be undertaken on whether to amend the market capitalisation and liquidity tests or eliminate them entirely.

Comments on the principles which ASX proposes will underpin the new settlement fail fee regime

ASFA agrees with the ASX principles to minimise the penalties for those who make genuine efforts to meet settlement deadlines but to provide disincentives for those who deliberately delay settlement. To this end we note the consistency with the principles of a restructure of the fail fee levy to a sliding scale that increases the effective penalty as settlement delay lengthens.

Please feel free to contact me or Anne Whittaker, Senior Policy Adviser, on 02 9264 9300 should you wish to discuss any of our above comments.

Yours sincerely,

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