



13 September 2019

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**ASA SUBMISSION – RESPONSE TO ASIC CONSULTATION PAPER CP319 - SECURITIES LENDING BY AGENTS  
AND SUBSTANTIAL HOLDING DISCLOSURE**

Dear Ms Laidlaw

The Australian Shareholders' Association (ASA) represents its members to promote and safeguard their interests in the Australian equity capital markets. The ASA is an independent not-for-profit organisation funded by, and operating in the interests of, its members. These are primarily individual and retail investors and self-managed superannuation fund (SMSF) trustees.

ASA also represents those investors and shareholders who are not members, but follow the ASA through various means, as our relevance extends to the broader investor community.

ASA will not respond to all aspects of the consultation paper 319, but will touch on selected points raised within the consultation paper before reiterating concerns with short selling relevant to retail shareholders participation in markets, as raised with ASIC in 2016 (attached).

ASA agrees with point 3 "Disclosure of substantial holdings acquired through securities lending is important for an efficient, competitive and informed market in quoted securities" but note that disclosure at T+4 in a T+2 environment is inadequate.

In relation to point 9 "deferring a prime broker's relevant interest arising from its borrowing rights under a prime broking agreement to the time at which the prime broker exercises that borrowing right. This aligns any substantial holding notification with the timing of changes in control of the securities", while disclosure of potential to borrow is meaningless in respect of company control factors, we believe the potential of holders to lend, should be advised both in terms of informing beneficial underlying holders of the potential exposure to counter-party risk, and to flag to the market the greater volatility of the particular shares (when compared to other companies with major shareholders who do not participate in securities lending).

ASA supports item 27, both the surveillance and nature of offence being strict liability, that is "Following legislative relief and guidance, we plan to conduct surveillance on compliance with Ch 6C by agent lenders. As noted in RG 222 at RG 222.18, persons who fail to comply with s671B commit an offence of strict liability and may be liable to compensate investors for any loss suffered from the contravention."

ASA supports item 33 "modifies s608 for the purposes of Pt 6C.1 so that a lender's relevant interest in loaned securities is not affected by the borrower's subsequent actions. The relief recognises the lender's right of recall of equivalent securities and the fact that it often does not know what the borrower does with loaned securities after transfer from the lender" although this highlight issues with temporarily transferring ownership of the securities".



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The ASA also notes concerns to wider issues around short selling.

While proponents of securities lending and short-selling reference the potential to improve market liquidity and provide an additional return for beneficiaries (which we consider inadequate to compensate for the counter party risk of default in any part of the transaction chain), retail shareholders consider short selling is detrimental to market integrity. Retail shareholders experience risk of loss due to the increased share price volatility which may occur at times when they are forced to sell the securities due to individual circumstances. The apparent potential for short-sellers to manipulate share prices for the benefit the short seller's position, appears an unfair abuse of market power.

ASA agrees with the statement in table 1 "Section 608 is based on powers that a person has over the voting or disposal of securities, not the person's intentions. Similarly, s671B is important for market integrity in a broad sense and not solely for the control of listed entities."

If you have any questions about this submission, please do not hesitate to contact Fiona Balzer, Policy & Advocacy Manager on (02) 9252 4244.

Yours sincerely

Annalisa Haskell  
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Australian Shareholders' Association