AFMA

20 July 2026

Attn: RRI Team

By email: rri.consultation@asic.gov.au

Dear Sir/Madam

AFMA Submission on CS 56 Remake of Legislative Instrument 2021/821

The Australian Financial Markets Association (AFMA) would like to note its support in general for the remaking of Legislative Instrument 2021/821. This instrument provides essential relief for securities lending and prime brokerage businesses in relation to the substantial holding provisions of Chapter 6C of the Corporations Act.

While the extension of the expiry date for a further five years is essential, the remaking is an appropriate time, given the recent release of the Government's Statement of Expectations to ASIC, to extend the exemptions currently in place to remove agent lenders entirely from the relevant interest and hence substantial holding disclosure requirements. Such an extension would be in the interests of Expectation 6.3 and 6.4:

> 6.3. advance the Government's productivity agenda by working closely with the Government, CFR and other regulators to promote better regulation and productivity growth in the financial sector. This includes active collaboration and information sharing, streamlining information and data requests, simplifying processes, aligning standards and working collaboratively with other regulators, and supporting reforms that streamline regulation and foster economic dynamism, while not compromising on the ability for ASIC to fulfil its statutory obligations;
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> 6.4. maintain a regular and transparent review program for regulatory guidance and legislative instruments to ensure they remain necessary, proportionate and aligned with the interests of good consumer, investor and market outcomes while supporting Parliamentary and public accountability through appropriate publication of consultation outcomes;

AFMA holds that reporting by agent lenders are not just of no value to the market and investors, but are actually detrimental. Investors and the market more generally are not interested in the holdings of those with only technical or administrative 'relevant interests' and their reporting confounds actual data of interest, which is that from holders with substantive control over companies.

We see no arguments for keeping agent lenders within the obligations *based on the value of the substantial holding disclosures* because these reports are not a benefit and instead impose a cost on investors and the market to remove the noise they create.

AFMA is well placed to advise ASIC of the consensus view directly from the industry on the value of information on substantial holdings from the lenders themselves. The industry view as represented by AFMA is that this information is *either of no value or actually detracts from investor understanding.*

We agree that s671B is important for market integrity in a broad sense, but this does not mean that all information that could be caught by this section can contribute to market integrity.

Substantial holding information *from agent lenders* is not important even when a listed entity is subject to a control transaction. The clear view from industry is that this information will not contribute to market integrity.

Arguments from the current structure of sections 608 and 609

We support the view that the current structure of sections 608 and 609 are properly read to include agent lenders as currently drafted. However, it is crucial to bear in mind that section 608 was drafted broadly in order to capture as much activity as possible to prevent avoidance. As is common in much of the Corporations Act the expectation of the drafters was that exemptions to the general rule would have to be made as demonstrated by the delegated powers given to ASIC to alter the law in the light of practice and future market developments, which were not foreseeable to the drafters. As such we do not view it as appropriate to rely on the current drafting of these sections as a basis for limiting what other refinements might be appropriate.

The broad drafting in s608 is consistent with other parts of the Corporations Act (e.g. the definition of 'derivative') and require multiple exceptions and reliefs to avoid illogical and inefficient outcomes and to fit standard business practices in a sensible way. Under these circumstances the drafting style of section 608 should not be a reason to rarely grant exemptions. Exceptions should continue to be granted where the logic suggests they are consistent with the underlying aims of the policy.

The total risk profile of agent lenders is created by the combination of the fiduciary duties, the licence obligations, and the wider context of the purpose for which the powers of the agent lender exist. Taken together these factors should build confidence that the agent lenders' powers are legally and contractually restricted to be not of a character to be of concern or interest for investors or the wider market. In a market-based economy these forces are real, stable over time and should be factored into calculations about the motivations for firms and individuals and what this means for the practical reality of arrangements. The possibility that a legal clause in a contract put there for the protection of clients could in theory be used against them should face some measure of discounting when it is noted that the agent lender is providing a service to the lender for which it is, and wishes to continue to be, compensated, and is operating a business with a reputation it wishes to preserve.

The incurrence of the costs associated with agent lender reporting for no market benefit is, by definition, inefficient. Increasing business costs, decreasing efficiency and harming the entities that make up the financial system is inconsistent with the requirements of the ASIC Act and Expectation 6.3 and 6.4 as recently released.

We encourage ASIC to consider the removal of agent lenders entirely from the relevant interest and hence substantial holding disclosure requirements as part of the current review of the legislative instruments.

Extension of the Instrument to the Self-Acquisition Provisions (Chapter 2J)

AFMA further submits that ASIC should take the opportunity of this remake to consider extending the scope of the instrument to address its interaction with the self-acquisition provisions of Chapter 2J of the Corporations Act, in particular sections 259B and 259D. As currently drafted, the instrument modifies sections 608 and 609 for the purposes of Part 6C.1 only and expressly states that nothing in sections 6 and 7 has effect for Chapter 6 or Part 6C.2. Chapter 2J is equally outside its scope.

Sections 259B and 259D prohibit a body corporate from holding shares in its holding company beyond a 10% relevant interest threshold. 'Relevant interest' for those purposes takes its ordinary meaning from section 608, unadjusted by the instrument. The result is that a securities lending arrangement which the instrument treats as benign for Part 6C purposes may nonetheless give rise to a relevant interest for self-acquisition purposes — the same conduct is treated differently depending solely on which regime is engaged.

By way of example, consider a situation whereby an agent lender within a corporate group lends securities (including shares in a related entity) to a third-party borrower under a standard GMSLA or AMSLA. The borrower on-lends or disposes of those shares. Under notional section 608(8A), the lender retains a relevant interest in the equivalent securities the borrower has agreed to return. For Part 6C purposes, the instrument governs what needs to be disclosed and when. But for Chapter 2J purposes, if those securities are shares in a holding company of the lender, that residual relevant interest counts without adjustment — the lender may find itself in excess of the 10% threshold in section 259B through no deliberate act and with no meaningful economic exposure or voting control.

AFMA respectfully submits that this is precisely the kind of artificial relevant interest that the instrument was designed to neutralise. The policy rationale for treating such interests as benign applies with equal force in the self-acquisition context – namely that a lender's residual relevant interest in equivalent securities to be returned does not reflect the substantive control or ownership that sections 259B and 259D are designed to address.

This gap has become more practically significant as corporate group structures in the Australian equity financing market have grown more complex. Following mergers and consolidations, securities lending activity previously conducted on a purely arm's-length basis may now involve entities that are related bodies corporate within the same group. The practical consequence is that compliance functions must monitor and potentially restrict lending activity involving intra-group or holding company shares purely because Chapter 2J applies on the unadjusted relevant interest basis — an operational burden with no corresponding regulatory benefit.

AFMA therefore respectfully submits that ASIC should consider whether the instrument's modification of the relevant interest concept should be extended to apply for the purposes of Chapter 2J, so that securities lending arrangements already treated as benign for Part 6C are treated consistently for self-acquisition purposes. This is not a request to weaken the self-acquisition regime — it is a request that artificial relevant interests created by the mechanics of securities lending should not be counted for Chapter 2J any more than they are for Part 6C. AFMA would welcome the opportunity to work with ASIC on the appropriate mechanism and drafting.

Yours sincerely

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