SECURITIES & DERIVATIVES INDUSTRY ASSOCIATION

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Mr John Hawkins
Secretary
Senate Economics Legislation Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

By Email: economics.sen@aph.gov.au

Dear Mr Hawkins,

Inquiry into the National Consumer Credit Protection Bill 2009 and related bills
- 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.

Through the development of the Bill, SDIA has provided input as a member the two Treasury Consultation Working Groups on margin lending, one looking at disclosure issues, and the other at the legislation and regulations. SDIA would like to make the following comments on the Bill, so far as it relates to margin lending.

1. Timing & Logistics

With the possibility Bill and Regulations may be passed in the Spring sittings, with an implementation date of 1 November (or possibly later), our Members are very concerned about the severe logistical burdens for the whole industry – Lenders and Advisers – and their clients – in terms of the need for new:

- Client agreements
- Unsuitability Assessments

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- 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.

We note that the *Financial Services Reform Act* provided for a transition period of over 2 years prior to its implementation in 2004. We are grateful therefore that the Bill provides for a **12 month** transition period, which is a significant improvement on the **3 month** period initially set.

2. Increase in facility

The new provisions are not retrospective, therefore existing pre-implementation clients are not covered. However, after implementation, if an existing client increases the level of a facility, this triggers an unsuitability assessment. Often, clients request an increase in facilities in order to facilitate trading. Sometimes such increases are not even requested: the client simply purchases securities, and advises the broker that settlement is to be via his/her margin lender. ASX transactions settle on T+3, and under recent amendments, brokers must close them out after T+5. Ideally therefore, an increase in an existing facility should **not** trigger the new requirements. Alternatively, if clients require increases immediately, there should be some streamlined or time-critical exemption to allow the trade to settle in accordance with ASX requirements. The *Corporations Act* Chapter 7 already incorporates a **time-critical exemption** for Statements of Advice (SOA), which is a useful model. If such a facility is not implemented, opportunity cost claims will arise against the Lender and/or Adviser through not being able to fulfill client 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)**: in July, ASIC released Consultation Paper CP108 on training requirements. The requirement for retail advisers to update their training for margin lending under RG146 will add significant costs to the whole retail advisory industry, somewhere in a region of $500 per adviser.

- **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 during transition.

5. Natural Person Guarantors

Recent announcements indicate that the Bill will only apply to natural person borrowers under margin lending facilities. Commonly, people guarantee the obligations of their companies. Clarification is required as to the Bill's application to natural person guarantors under margin lending facilities.

We are grateful for the opportunity to raise these issues with the Committee, and would be happy to discuss our submissions further at the Committee's Hearing on this Inquiry.

Yours sincerely,

David W Horsfield
Managing Director/CEO

ABOUT SDIA: The Securities & Derivatives Industry Association is the peak body representing the interests of wholesale and retail market participants in Australia. SDIA was formed in 1999 at the time of the demutualisation of the Australian Stock Exchange. Currently we have 66 member organisations, which account for some $4bn worth of trading daily on the ASX, which is approximately 98% of the market by value. In addition we have over 1300 individual members and are working to build the profession of stockbroking. Our member firms employ in excess of 25,000 people.