

09 July 2021

Ms Katie Ryder
Senior Specialist, Market Integrity Group – Legal & Policy
Australian Securities and Investments Commission
Level 5, 100 Market Street
SYDNEY NSW 2000



By email: katie.ryder@asic.gov.au

Dear Ms Ryder

Consultation on remaking Class Order 11/272 – Request for feedback

Thank you for your email of 21 June 2021 inviting feedback on this matter. This submission in response is made by the Corporations Committee (the **Committee**) of the Business Law Section of the Law Council of Australia.

The Committee considers the Australian Securities and Investments Commission (**ASIC**) Class Order [CO 11/272] (**CO 11/272**) to be necessary for effective application of the substantial holding provisions to share lending and prime broking. The Committee strongly supports ASIC remaking CO 11/272 and considers that it is operating effectively, so far as it goes.

The Committee supports ASIC's proposal to extend the instrument to provide relief for agents in securities lending transactions in terms at least as broad as ASIC's CP 319 draft instrument (**2019 Draft Instrument**). However, the Committee submits that ASIC should, at the same time as remaking the instrument with the 2019 Draft instrument amendments, also consider extending the relief. For example, we submit that it:

- should not be restricted to agents carrying on a custodial business; and
- should be available to agent lenders that do not have, and are not required to have, an Australian financial services licence.

The Committee understands that most agent lending is automated and does not involve the exercise of discretion by the agent. The Committee queries whether, in such cases, all the disclosure required by the 2019 Draft Instrument is necessary or appropriate to give effect to the objects of Chapter 6C of the *Corporations Act 2001* (Cth) (the **Act**). The Committee believes there may be scope, in the case of agent lending, for better targeted disclosure requirements to provide more useful disclosure to the market. We are also of the view that there may be section 606¹ relief that is warranted. This may require further consideration or consultation. If that is not possible before the sunset of CO 11/272, the Committee submits that ASIC should:

¹ Section 606 of the Act.

- remake and extend CO 11/272, as discussed above (ideally with our proposed extensions, but in any event as set out in the 2019 Draft Instrument); and
- continue to explore, or revisit within 12 months, the potential for broader relief and better targeted disclosure requirements.

Committee representatives would be happy to discuss any of the matters raised or provide further detail. If you have any questions – please contact the Chair of the Committee, Robert Sultan, at robert.sultan@nortonrosefulbright.com or 0418 581 353, or Committee Member Bruce Dyer at bdyer@consiante.com.au or 0437 033 591.

Yours faithfully,

A handwritten signature in black ink that reads "Greg Rodgers". The signature is written in a cursive, flowing style.

Greg Rodgers
Chair, Business Law Section