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Dodd-Frank Financial Reform Act: Section 417(a)(2) Short Sale Reporting Study

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street N.E.

Re: File Number 4-627

Dear Ms. Murphy,

Data Explorers welcomes the opportunity to respond to the Securities and Exchange Commission's request for comments relating to the proposed study of the cost and benefits of short selling, contained in its public consultation required by the Dodd Frank Act Section 417(a)(2) [Release No. 34-64383; File No. 4-627].

About Data Explorers

We are experts in the field of securities lending and short selling data. Our aim is to provide increased transparency and operational efficiency to the market and our clients.

Data Explorers was founded in 2002 by Mark Faulkner, a recognized expert in Securities Lending[i]. We are majority owned by Bowmark Capital LLP, a private equity firm authorized and regulated by the Financial Services Authority in the UK. Our 110 employees are based in New York, London, Edinburgh and Hong Kong. Our management team is comprised of experienced individuals in the field of financial information with deep industry expertise.

We work closely with the media around the world to assist in the understanding of the market in relation to short selling and securities lending and maintain close contact with regulators globally, and have been consulted by the world's largest regulators and central banks and count some of them as clients.

Market participants have voluntarily contributed their global securities lending trade information to us since 2002. Our business model requires market participants to contribute their data which we process, cleanse and aggregate into usable products for our clients. We now have the largest and most transparent database of this

type in the world. The data represents the majority of the global equity and fixed income loans used to settle covered short sales.

We consolidate individual transaction data and publish this to our customers and the market via news stories, proprietary APIs, data-feeds, websites and third party channels such as Bloomberg, S&P, Factset and Thomson Reuters.

We protect client anonymity and therefore provide the equivalent of consolidated disclosure. This data is published through the day, using consistent metrics across a broad range of equity and fixed income markets in order to facilitate interpretation.

We have more than 250 clients around the world. This includes over 90% of both the industry's Agent Lenders and large Prime Brokers. We also have a significant and growing presence in Alternative and Traditional investment managers, including most of the largest global hedge funds and asset managers.

Our business has been instrumental in bringing greater transparency to the securities lending market. Our experience indicates that financial transparency in general can lead to increased market size and depth.

Executive Summary

We believe the following general points are relevant in the evaluation of a potential short selling disclosure regime:

- *The reasons why investors short a security are diverse and not always identifiable:* Short selling data requires careful interpretation. Short selling often takes place in the context of broader, hedged transactions. The motivation to short is not always a negative view on the price of the security. The majority of Hedge Funds short for hedging purposes and sometimes may even short a stock as part of a broader investment strategy without necessarily having a negative view on the security itself.

- *The unprotected nature of the short seller due to their unlimited loss potential*: The key difference between long investors and short investors is the potential for unlimited loss. Any disclosure regime would need to consider the potential of exposing investors to an increased risk of unlimited losses, as well as the limited scope for short sellers to impact the market due to the risks in doing so.

- Unintended consequences of real time short position disclosure can potentially include:

    - *Potential for reduced market activity including hedging and deal facilitation / liquidity:* The public disclosure of this data in real time could potentially compromise proprietary trading strategies as well as increase disclosure costs to an unacceptable level for certain market participants. This would therefore inhibit asset managers from engaging in certain activities such as hedging. Larger institutions could potentially modify their behaviour in order to avoid potential exposure of their trading strategies[ii]. Smaller institutions may not be able to cover the costs of disclosure and consequently see their risk profiles affected. This would have a significant negative impact on institutional investors such as pension funds as well as individual investors in funds that employ such hedging strategies.

      This point has been publicly noted by the SEC:

"A principal drawback of requiring investors to disclose publicly their short sales or short positions is that such disclosure could compromise proprietary trading strategies, as well as chill hedging activities. Hedging is socially valuable in that, among other things, it can encourage investors to take long positions, thus facilitating capital formation. More active trading strategies that rely on short selling also serve an important purpose, improving market quality by incorporating the more pessimistic views of short sellers into securities prices. To the extent additional short sale disclosure results in less short selling, markets actually may become less transparent, with securities prices reflecting fewer perspectives."[iii]

- *The required disclosure may not provide a full picture of the market:* Much of the new short selling data which may be disclosed under the proposed guidelines will reflect a range of technical activities –hedging of derivatives and swaps, market making, convertible arbitrage, as well as directional shorting. Some, but not all, of this activity will be revealed by the 5 proposed flags. Non-professional investors would be particularly liable to misinterpreting the data and incur unlimited losses when trying to copy a shorting strategy without understanding the motivation behind it. In our experience investors never use this data in isolation and require significant processing power as well as other information and expertise in order to appropriately interpret the data.

- *Potential for increased 'noise' and information asymmetries in the market:* A key consideration in the evaluation of real time disclosure of short selling positions is the target audience for this data. The availability of real time short selling data may particularly place individual investors with less processing and real-time interpretation capabilities at a disadvantage versus 'data hungry' organisations such as quantitative or program trading teams[iv]. We also believe it could potentially result in increased 'noise trading', market volatility, and may result in 'bandwagon effects' against certain issuers incorrectly identified as shorting targets.

- *Potential regulatory arbitrage by highly mobile financial institutions:* Regulation under discussion and in some cases already in force in Europe for example, currently proposes disclosure of manager level positions. The SEC consideration of consolidated disclosure is preferred by European money managers[v].

- *Preventing market abuse:* Public, real time short position disclosure may not be effective on balance, in preventing market abuse and could possibly result in asymmetries of opportunities between larger players with more processing and interpretation power and smaller or individual market participants.

We recommend 'as soon as practicable' private disclosure of significant position changes, placing the cost of compliance on the short seller and giving the regulator relevant and timely data. We recommend low frequency public disclosure, which minimizes the public cost of collection and reporting but achieves the overall aim of regulating short selling and managing unintended consequences.

We would be delighted to provide any further assistance that the SEC may require.

Yours sincerely

Donal Smith
CEO

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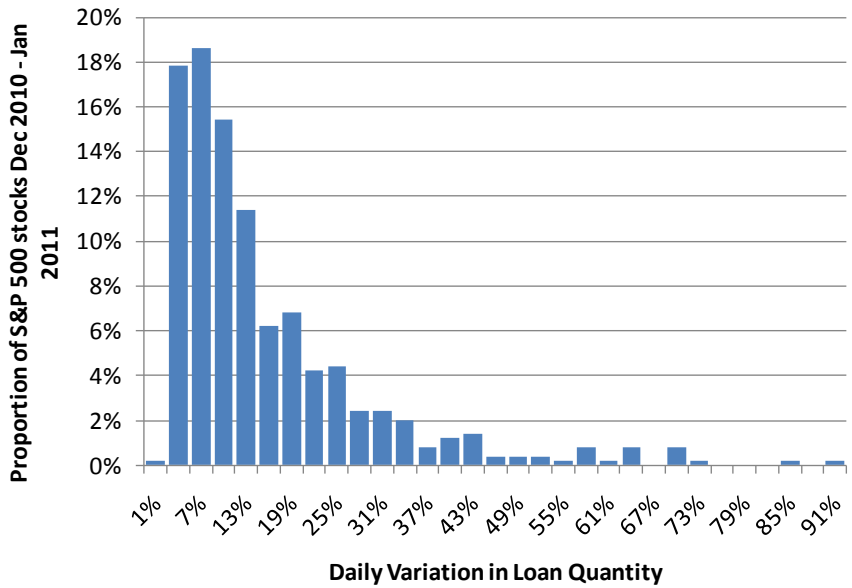
Q. No.	Question	Answer
1.1	How are currently available data used by issuers, market participants, and others (such as SROs, data vendors, media, analysts, and academics) today?	Currently available data sets include: (1) Bi-monthly disclosure of short sale positions via stock exchanges (2) Daily short sale trade data from exchanges available via FINRA (3) Daily Securities Lending transaction and position data reflecting net position data available daily via Data Explorers and Sungard Exhibit A shows the scale of lending activity in all major asset classes based on the Data Explorers database: **Exhibit A: Global Lendable Inventory and Loans as of June 16th, 2011** | | Lendable Value $m | Value on Loan $m | |---|---:|---:| | All Securities | 13,317,409 | 2,017,128 | | All Equities | 7,504,267 | 833,193 | | All Bonds | 5,793,289 | 1,183,516 | *Source: Data Explorers* Exhibit B shows the scale of lending activity across global equity markets based on Data Explorers database: **Exhibit B: Equity Lendable Inventory and Loans as of June 16th, 2011** | Country | Lendable Value $m | Number of Stocks Value > 0 | Loan Value $m | Number of stocks Value > 0 | |---|---:|---:|---:|---:| | Americas | 4,204,699 | 9293 | 393,016 | 7279 | | EMEA | 1,969,098 | 5601 | 250,599 | 3369 | | Asia | 931,757 | 7063 | 100,320 | 5167 | *Source: Data Explorers* Based on Data Explorers' experience and customer feedback, issuers, market participants and others use this data in the following ways: Issuers currently use (1) and (3) sporadically, to understand short positions being taken on their stock, but mainly during corporate events such as hostile takeovers or when their share price is under pressure. In such cases, the data needs careful interpretation and to be analyzed in context with other data as it can be misleading. Issuers generally rely on their Investor Relations advisors who can provide more detailed views of their shareholdings and interpret the short selling data by consulting with shareholders and short sellers directly to understand motivation. Short selling data provides management with valuable feedback on the markets' view of the company's long-term prospects. From the perspective of Investment Managers: For Investment Managers, the value of real time short interest data depends on their time

Q. No.	Question	Answer
		horizon. Real time consolidated disclosure will be valuable for high frequency trading funds, providing them with a fresh set of data to mine for trading signals. For the majority of traditional long only funds, investment horizons of a month or more are common. Recent research[vi] using Data Explorers data shows that analytics which include short interest data can provide long term (12 month) signals for stock selection decisions; they also show that for most long only managers, a delay of two or three days in the publication of data has a negligible effect on the strength of a one month-ahead signal. Data Vendors: Comingle this data as another market sentiment indicator within their data offerings to end users. The data is provided in conjunction with other datasets that provide context Media commentators: Use (1) and (3) to report on market sentiment and trends relating to specific securities or sectors. The data is used in context. Analysts: Use (1) and (3) to complement their technical and fundamental analysis Academics: (1) and (3) are widely used in academic research to understand market behavior see www.dataexplorers.com/research for some examples
1.2	How widely distributed are currently available data? Do costs or other factors limit access to currently available data?	There are no significant costs or other factors that limit access to the data today. Public short sale position data (1) is available on a bi-monthly basis to individual investors on a security-by security basis for free and as a feed, for a monthly charge from various direct vendors on the web. Daily short sales data (2) is available to institutional investors over quantitative trading platforms such as TQA (Thomson Reuters) and others as well as recently over FINRA for free but is more difficult to access and interpret due to the nature of the data Data Explorers Short Interest data is available to anyone who subscribes. Individual investors can also download daily short interest data from www.dataexplorers.com for free by typing the securities' tickers. Data Explorers news-worthy data with interpretation by our media team is available daily on its website, for free www.dataexplorers.com/news. Data Explorers data is also available on FT.com and other media and retail websites.
1.3	Are there other important sources of information as to short sales and short sale positions in addition to those mentioned above?	---

Q. No.	Question	Answer
2.1	The Division understands that equity market makers rely on short selling to facilitate customer buy orders and to ensure that they can maintain two-sided markets without carrying large risky positions. The Division also understands that option market makers frequently sell short to hedge positions taken in the course of market making activities.12 Why else might market makers sell short?	---
2.2	How much of all short selling is accounted for by bona fide market making?	---
2.3	Do market makers sell short for purposes other than bona fide market making?13 Are there ways in which short sales by market makers and other market participants performing similar roles or functions (but that are not subject to some or all of the requirements applicable to market makers) could be viewed as problematic?	---
3.1	The Commission requests comment on the ways and the extent to which, if any, commenters believe that short selling has been associated with abusive market practices, such as "bear raids" where an equity security is sold short in an effort to drive down the security's price by creating an imbalance of sell-side interest? 14	The data in Exhibits A and B suggest that, compared with the activities of long only funds, the scale of short positions is usually small. Long only funds, as the owners or managers of assets clearly have a vested interest in higher share prices, but are also the primary providers of lendable inventory which makes short selling possible. This suggests that for most stocks, at most times, the impact of short selling will be minimal. However, it is possible that for thinly traded stocks, short selling can temporarily tip the balance against a stock. Recent research[vii] using Data Explorers data shows evidence that this effect can be identified in smaller stocks, but the impact on prices is small and short lived. This supports an exceptions based approach where rapid changes in positions can be immediately identified; with the option of public disclosure at the discretion of the regulator and the issuer involved. The general value of "real time" reporting depends on the extent of intraday variation in short positions. Exhibit C shows the distribution of S&P 500 stocks over a recent 2 month period.

Q. No.	Question	Answer
		Exhibit C. Daily Variation in Loan Quantity for S&P 500 stocks, Dec 2010 – Jan 2011  *Source: Data Explorers* This shows that about half of the S&P 500 stocks show daily variation of around 10% or less. This implies that high frequency intraday reporting will show limited variation in many stocks; which in turn suggests that exceptions based approaches ("a change in short position of more than x") could be an efficient way of identifying unusual activity.
3.2	In addition, the Commission requests comment on the ways and extent to which, if any, commenters believe trade-based manipulation (i.e., manipulating without a corporate action or spreading false information)15 using short sales is possible?	It is theoretically possible for short sellers to drive down share prices when they cause the balance of overall supply to significantly exceed demand at any given moment. Short sellers need to borrow stock to be able to sell; but this may be more than balanced by traditional cash buying as well as stock purchases financed by cash loans. Short sales usually represent a stable proportion (around 50%) of traded volume, largely due to hedging and market making. Manipulative short selling would result in a sudden spike in this proportion. It is noteworthy though in this case, that the short seller would incur a significant and potentially unlimited risk in doing so. Smaller, thinly traded stocks are however most vulnerable to both upward and downward price manipulation.
3.3	Would greater transparency of short positions or short sale transactions help to better deter or prevent such abuses, or assist in additional appropriate actions to prevent them?	We believe the regulator would benefit from increased disclosure of significant position changes which would alert the regulator on abnormal behavior or material changes/acceleration of shorting activity which could warrant further monitoring. In the case of suspected trade-based manipulation, the regulator would then be able to audit the historical data. Simple awareness of this reporting system may also act as deterrent.

Q. No.	Question	Answer
3.4	If so, what new disclosures should be required?	Exceptions based private disclosure of net short selling positions to the regulator based on a customized set of alerts when activity differs from the 'norm' –with the norm defined including the appropriate variables such as relative and absolute volume shorted, security type, sector, market conditions and other considerations. Data Explorers data shows that on any given day only about 5% of securities hit their 52 week high short position levels (shares outstanding on loan) for securities that have over 5% of total shares outstanding in lending programmes, and less than 10% of all securities. Although these averages vary by sector, in general the volume of data to be interpreted would be significantly reduced if the appropriate thresholds and alerts were created to identify significant position changes. That would reduce the cost of monitoring significantly due to the reduction in data flow and manipulation and interpretation costs for the regulator.
4.1	Would real time reporting of the short positions of all investors, intermediaries, and market participants be feasible, and if so, in what ways would it be beneficial?	Real time reporting of short positions by all market participants is feasible but not cost effective. The incremental cost of modifying existing reporting systems could be absorbed by large players but could be significant and potentially render smaller funds and investors commercially unviable. This would concentrate the market further into larger, better informed funds and prevent smaller players from taking necessary risk management actions for example, by reducing shorting based hedging.
4.2	What problems would it address?	Data Explorers' data shows that there are limited intraday changes in volume and pricing in the securities lending activity that underpins short selling (Exhibit C).
4.3	What would be any reasons, in terms of benefits and costs, for treating short sale position reporting differently than long position reporting?	The key difference between long and short positions is the possibility of unlimited loss by the short seller. The potential unintended consequences of real time position disclosure, particularly the potential for herd behavior could increase the short seller's risk to unacceptable levels and result in a further withdrawal from the market and reduction in this market activity. In addition, the scope for unlimited loss supports the case for disclosure to the regulator of large short positions (rather than individual trades) or significant position changes by systemically important institutions.
4.4	Would "real time" reporting be necessary to achieve these benefits, or is "prompt" updating for material changes in the short position (such as Schedule 13D updating requirements) sufficient? 25	Prompt updating of material changes in short positions such as 13D disclosure would also be sufficient with 'as soon as practicable' private updates to regulators of significant position changes which can highlight market anomalies. Real time reporting is unlikely to achieve those benefits. It usually results in high frequency repetition of the same information; the nature of short selling is that exception based reporting is more likely to allow regulators to identify anomalies, systemic risks, and possible market abuse.
4.5	If real time reporting would be beneficial, should "real time" be defined as "continuously updated as soon as practicable," or as frequent "snapshots" of short positions throughout the trading day?	---
4.6	Should "as soon as practicable" be defined and, if so, how?	A number of Data Explorers client trade facilitation desks (who mainly provide short term liquidity to clients) have indicated that they need 5 working days to unwind most large positions and would have to reduce their facilitation capacity (i.e. market liquidity) if this period was shortened.
4.7	If frequent short sale position reporting of some kind would be beneficial, how frequently should such reports be made in order to realize those benefits?	Private, 'as soon as practicable' disclosure to the regulator of significant position changes and threshold-led public disclosure (as in 13D) or consolidated tape disclosure of short positions on a weekly or bi-weekly basis would be enough to realize those benefits.
4.8	Would real time data be more or less accurate than data	Real time data would be less accurate than data reported on a delay (end of day for example) because trades are often shorted and bought

Q. No.	Question	Answer
	reported on a delay? Please explain why or why not.	back intraday for a variety of reasons including market making and hedging. Intraday data can therefore be misleading.
5.1	Who would be likely to use real time short position data, and how?	Real time short position data is most likely to be used by quantitative trading desks and programmatic trading applications. It would provide signal, opportunities for arbitrage and potentially large-volume intraday programmatic trading.
5.2	Would the short sale position data be too voluminous to be used directly by investors?	Short sale position data may be too voluminous to be consumed directly by most investors if published in real or near real time. Periodic (bi-weekly or weekly) data would be consumable by individual investors using standard tools.
5.3	Could such data help to detect more easily, better deter, or better prevent short selling abuses?	Such data could help detect non-standard market behavior for a specific security. Such activity could be due to news flow or other legitimate activities being performed by market participants and not be related to short selling abuses. The regulator would need to take that information in combination with other data such as news flow and electronic market chatter for example in order to interpret the data.
5.4	Would market commentators and others use real time short position data to help the public better understand the U.S. securities markets?	Market commentators currently use Data Explorers securities lending data to help the public better understand market behavior especially around corporate events or news. However the data needs interpretation and generally requires a close dialogue with market commentators and interpretation in the context of other data and research by such commentators to avoid misrepresentation, which can have a negative impact on the market. Data Explorers has built strong relationships with the media over recent years and provided extensive support for market commentators to be able to interpret the data correctly and provide the public in the US and globally with a better understanding of the securities market. The risk of misinterpretation is real and can have significant consequences such as for example if the level of short interest were misrepresented as higher than actual due to the inability by the media commentator to interpret the data, they would be implying a negative view on a security when the reasons for shorting may be unrelated to such motivation.
5.5	Would users of real time short position data be able to derive reasonably clear interpretations of the data in real time, and, to the extent they could not, how would the costs and benefits of any reporting regime be affected?	High Frequency traders will have the infrastructure and expertise to make use of real time data, usually to identify and exploit trading anomalies.
5.6	Would real time data on short positions help or hinder long-term investors in making "efficient investments?"26	Professional, fundamental, long-term investors generally do not concern themselves with short-term technical indicators such as short interest. We don't believe short interest data would have an effect on them making "efficient investments" either way unless it became distracting to the market overall and affected market entry/exit or distracted less professional investors. Real time data on short positions may become distracting and affect the decisions of non-professional investors or create more 'noise' in the market leading to increased volatility in sentiment which may affect some investment decisions by individuals.
6.1	How would real time data on short positions affect the behavior of short sellers and other investors?	Public disclosure in 'real time' would provide market participants with more information generally. This reinforces investor confidence and will be particularly reassuring following some of the negative publicity that has surrounded short selling in the past. On the other hand, disclosures may be misinterpreted by asset managers and lead to distortions in the market or lead to instability due to the increased level of 'noise'. Data Explorers growing experience with intraday data shows a significant increase in interpretation difficulties of such data. <u>From the perspective of Lenders:</u> For Lenders, the Benefit of real time public disclosure is minimal, because they typically report to trustees and investment committees on a monthly or quarterly cycle. Many asset owners (mutual funds, pension funds, and insurance companies) are willing to receive a fee from those hedge funds who short sell the long holdings of the asset owners.

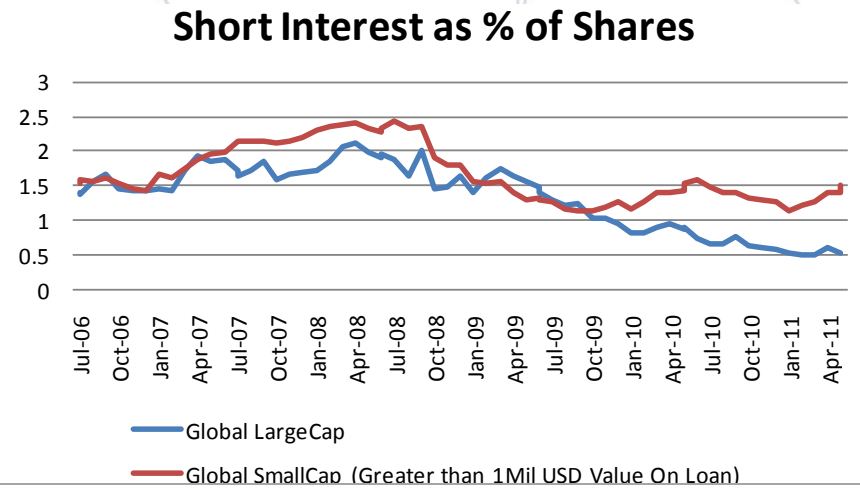
Q. No.	Question	Answer
		Our data shows that most pension and insurance fund asset owners and mutual fund managers in the US are engaged in stock lending in some form. This also implies that most asset managers are willing to accommodate short sales in stocks where they have long holdings. From the perspective of Borrowers: For Borrowers, real time short interest data is valuable because it helps them plan their loan inventory and avoid replicating the positions of other short sellers (the avoidance of price squeezes is a key element of risk control for short sellers). From the perspective of Investment Managers: For Investment Managers, the value of real time short interest data depends on their time horizon. Real time consolidated disclosure will be valuable for high frequency trading funds, providing them with a fresh set of data to mine for trading signals. For the majority of traditional long only funds, investment horizons of a month or more are common. Recent research[viii] using Data Explorers data shows that analytics which include short interest data can provide long term (12 month) signals for stock selection decisions; they also show that for most long only managers, a delay of two or three days in the publication of data has a negligible effect on the strength of a one month ahead signal. This research also shows that Short Interest is, *in isolation*, one of the less valuable metrics for the investment manager; it needs to be viewed alongside the supply of stock available to cover short selling, the cost of borrowing, the source of demand and supply, and the traded volume in the underlying security. Disclosed data in this market needs to be placed in a broader context using appropriate analytics.
6.2	Would it affect abusive short selling, in particular?	It is possible it may theoretically provide further opportunities for abusive short selling by players with large processing capabilities, but this would be tempered by the potential for unlimited losses as described above and the increased 'noise' generated by difficult to interpret data.
6.3	To what extent, if any, would such data deter non-abusive short selling	Such data may deter non-abusive short selling due to the risk of transparency of trading strategies as well as the cost of disclosure for smaller firms as described below.
6.4	For example, would such data reveal the trading strategies of non-abusive short sellers?	The public disclosure of this data in real time could potentially compromise proprietary trading strategies as well as increase disclosure costs to an unacceptable level for certain market participants. This would therefore inhibit asset managers from engaging in certain activities such as hedging. Larger institutions could potentially modify their behavior in order to avoid potential exposure of their trading strategies[ix]. And smaller institutions may not be able to cover the costs of disclosure and consequently see their risk profiles affected. This point has been publicly noted by the SEC: "A principal drawback of requiring investors to disclose publicly their short sales or short positions is that such disclosure could compromise proprietary trading strategies, as well as chill hedging activities. Hedging is socially valuable in that, among other things, it can encourage investors to take long positions, thus facilitating capital formation. More active trading strategies that rely on short selling also serve an important purpose, improving market quality by incorporating the more pessimistic views of short sellers into securities prices. To the extent additional short sale disclosure results in less short selling, markets actually may become less transparent, with securities prices reflecting fewer perspectives."[x]
6.5	Could the availability of such data create new opportunities for unfair or otherwise abusive market practices, such as bear raids or short squeezes?	The availability of such data could potentially increase the ability of large market participants with high processing power to find further opportunities for abuse. This risk is however tempered by the points noted above of unlimited potential loss to short sellers as well as the relative small participation of short selling in the overall market (Exhibit C).

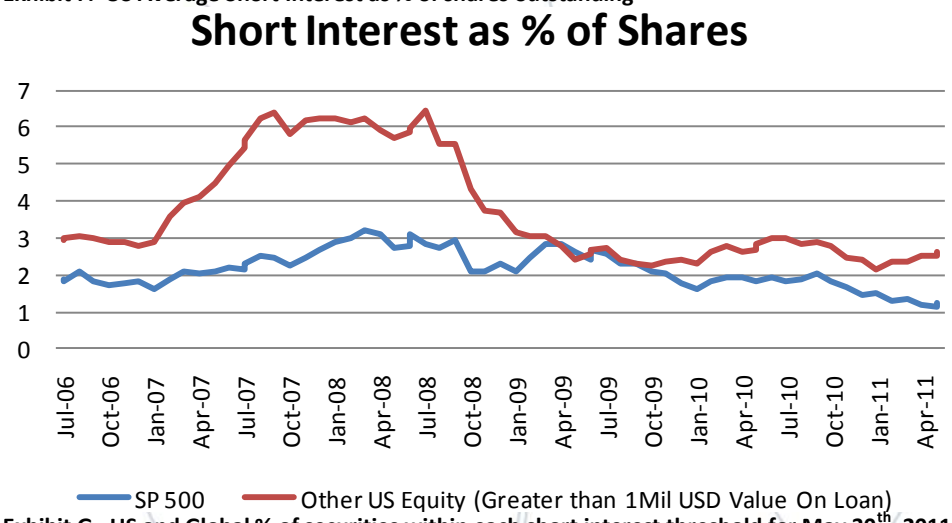
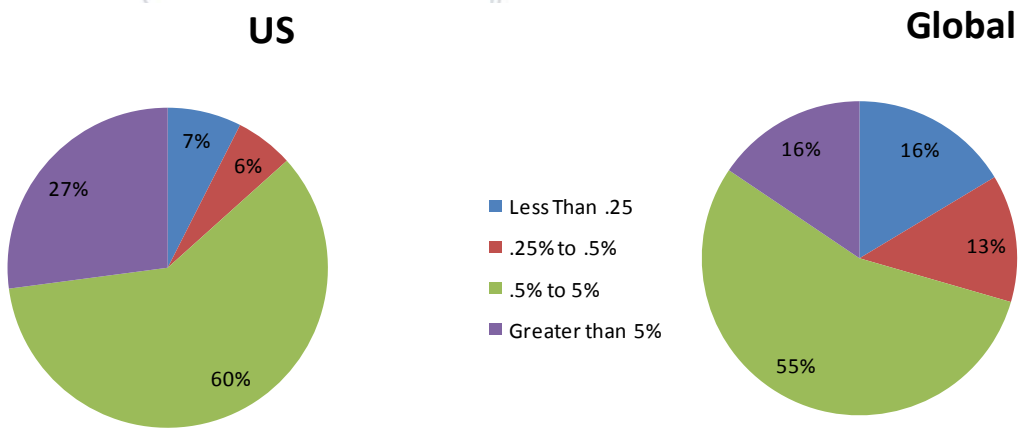
Q. No.	Question	Answer
6.6	Could real time data on short positions lead to copycat trading? 27	The resulting prevalence of algorithmic trading makes Copycat trading more likely; associated outcomes are pro-cyclical share price movements, feedback loops, and predatory trading. The experience in the UK with current disclosure regimes seem to indicate that copycat trading does occur especially when disclosure includes an institution of renown in the market[5]. There is also anecdotal evidence from market participants that disclosure could generate opportunities for larger players to signal to the market and benefit from copycat trading.
6.7	How would real time data on short positions affect investor confidence?	Some corporations believe that short selling has the potential to artificially depress their share price, rendering them vulnerable to takeover; or even to bankruptcy, in the event that their funding costs are linked to the level of their share price for example. For these corporations, high frequency disclosure would allow them to identify when and to what extent their shares are being sold short. Public disclosure in these cases may however fuel imitative short selling. In thinly traded stocks this might lead to a temporary depression in share prices, but the main impact is more insidious. To quote former SEC Chairman Cox: "When an irrational panic is fuelled by false rumors that investors believe must be acted on immediately – lest everyone else get out first – market integrity is threatened"[xi]. Private disclosure with a trigger that alerts affected corporations would be a more discreet approach to achieving the same result. The data could then be analyzed by them in context and with the assistance
7.1	How would real time data on short positions affect liquidity, volatility, price efficiency, competition, and capital formation?	See executive summary.
7.2	Would real time short position reporting affect equity-related securities markets, such as option or other derivative markets, convertible bond or other debt markets?	Real time short position reporting is likely to lead to increased use of derivatives (put purchase, sales of calls, synthetic short positions (long put / short call), and swaps for example. Disclosure of equity shorts might discourage convertible arbitrage (due to concerns about patchy bond liquidity during forced equity liquidations) which would contribute to market inefficiency.
7.3	If so, in what ways?	See 7.2.
8.1	How should "position" be defined to help ensure any short sale position reports would be useful in detecting and deterring abusive short sale practices?	Positions are the accumulated 'stock' of short transactions. Market abuse is primarily about flows, i.e. the change in the position. The vintage of the various elements of the position is a key indicator of the likely scale of market abuse.
8.2	Should "position" be defined differently to accomplish another purpose?	---
8.3	If so, how, and what purpose would such a definition help accomplish?	---
8.4	Would there be a trade-off between minimizing incremental implementation costs, above the cost of existing short reporting systems and procedures, in the context of a short position reporting regime and its utility?	We believe the right balance can be struck with 'as soon as practicable' private disclosure of significant changes combined with periodic public disclosure at a threshold similar to long-only positions. That would prevent information asymmetries in the market, unintended consequences of real time disclosure, and allow the regulator to monitor the market in a cost effective but appropriate manner.

Q. No.	Question	Answer
8.5	For maximum utility, should short positions be reported gross, or net of long positions, or in both ways?	Short positions should be reported net of long positions only in order to more accurately reflect the investors' views of the stock. As per our comments above, we still believe the interpretation of such data would be complex and require analyzing the data in the context of other market indicators, and we believe professional investors are better placed to do so than non professional or individual investors.
8.6	Should short positions include derivatives and index components?	They should not as that would distort the interpretation of the data. Investors use different instruments across a portfolio of investment decisions in order to manage their risk and reward profile. Certain activities in the derivatives or index asset classes may not reflect the overall view the investor has on that security and would certainly distort the possible interpretation of the data.
8.7	Should short positions be the net economic exposure to a stock across all instruments?	Yes, for completeness. It would reveal the true extent of hedging which may in turn allay the fears of those who believe short selling is a vehicle for market manipulation. However this may be costly and very difficult to implement.
8.8	Should short positions be defined as in former Rule 10a3-T, in which "the Form SH short position is not net of long position?"28	Please see 8.5 above.
8.9	In the case of broker-dealers, should position reporting be based on existing Regulation SHO aggregation units within broker-dealers,29 for the broker-dealer taken as a whole, or for its holding company?	For completeness, it would make sense to look at the entire company however; from an operational perspective the current reporting structure would be more cost-effective than requiring a potentially costly change of entity-level reporting.
8.10	Please describe the feasibility of any incremental changes to the existing short sale reporting systems that would be necessary to report short sale "positions." Would any potential definitions of short positions be infeasible in real time?	----
9.1	What would be the benefits and costs of short position reporting if "position" was defined to mean short interest,30 which would be the aggregate number of shares short in each stock?	See 8.1 – aggregate numbers conceal the vintage and turnover within the 'stock' of the short position. Gross and net flows (changes in position) are more informative.
9.2	Would real time public reporting of aggregate short interest be feasible?	Real time reporting of aggregate short interest would be feasible at exchange level and then aggregated by a large market data provider.
9.3	If so, what problems would it address, and how (and by whom) would this data be used?	This data would be used by: - Quantitative investors: Would use this data to derive signal for their trading strategies - Long-short hedge funds: Would use this data to inform their short-selling decisions - Prime Brokers: Would use this data to provide market colour and support their Hedge Fund clients' short-selling decisions - Issuer Corporations: Would use this data to understand short selling trends and market sentiment
9.4	Should the position reporting to be examined in the Division's study be more comprehensive than the current bi-monthly short interest reporting? For example, "arranged financing" (which would include borrowing from a foreign bank or affiliate to cover short positions) is not currently included in short interest.	There are two possible elements here – one is the collection of offshore securities lending activity to cover short selling, including directional shorting; the other is the borrowing of stock to use as collateral in repo transactions – i.e. borrowing for purposes other than shorting. It is necessary to know the scale of each type of borrowing in order to identify the pure short selling element.
9.5	What would be the impact of including arranged	---

Q. No.	Question	Answer
	financing in a definition of short position?	
10.1	What would be the feasibility, benefits, and costs of real time short position reporting to regulators only, and not to the public?	For the individual institution reporting the data the feasibility and costs would be similar to reporting it to an entity which would in turn offer it publicly. For the market as a whole, the data can be managed in a more cost-effective manner for the Regulators' purpose by creating the appropriate queries and storing only data which fits within the regulator's desired boundaries for investigation together with a sample for normal market activity for example.
10.2	What would the benefits and costs be if this real time reporting information were to be made public on a delayed basis?	The reporting costs would be significantly lower than reporting to the public on a real time basis but the consumption of data would be the same therefore the costs to the aggregator would be the same unless only transactions falling within pre-agreed alerting parameters were stored.
10.3	What length of delay might best balance any benefits and costs?	A number of DX client trade facilitation desks (who mainly provide short term liquidity to clients) have indicated that they need 5 working days to unwind most large positions and would have to reduce their facilitation capacity (i.e. market liquidity) if this period was shortened. As per Question 3.4 based on Data Explorers data, regulators would only need to interpret and store between 5% and 10% of the total positions in the market if the thresholds were defined for storing for example and this could be reported on a delayed basis.
10.4	Who would be in a position to report short positions in real time?	The exchanges, and some market data vendors collating and aggregating the exchanges' data
10.5	Would broker-dealers be able to accurately report customer short positions in real time?	The prime brokers would potentially be in a position to report those positions channeled via them. However the proliferation of multi-prime structures in Hedge Funds may make it more challenging for any individual Prime Broker to report the totality of a Hedge Fund's positions.
10.6	Would anyone else be better suited?	Exchanges and market data vendors would be best suited to that.
10.7	Would short sellers themselves be equipped to report their own short positions in real time?	Large Hedge Funds and Prime Brokers would, smaller players would potentially find it prohibitively costly and need to modify their trading strategies altogether if this were mandated.
10.8	Would anyone but the short seller be in a position to report the short seller's short position, whether or not the short position was defined as the short seller's economic position including derivatives?	See 10.5
10.9	What would be the feasibility of adapting the technology infrastructure that supports existing reporting requirements to support real time short position reporting?	It is feasible but the costs may be prohibitive especially for smaller players.
12.1	Who would be in a position to collect and disseminate short positions in real time?	The exchanges would be in a position to collect and disseminate short positions in the securities traded on their systems. Large market data vendors would be in a position to aggregate the data from the exchanges, add this new data feed to their existing real time feeds and disseminate them to the market.
12.2	Would it be feasible for listing exchanges to collect and disseminate this information?	Yes it would be possible.
12.3	Would a consolidator be better suited to collect this	The exchanges and consolidators would work in combination.

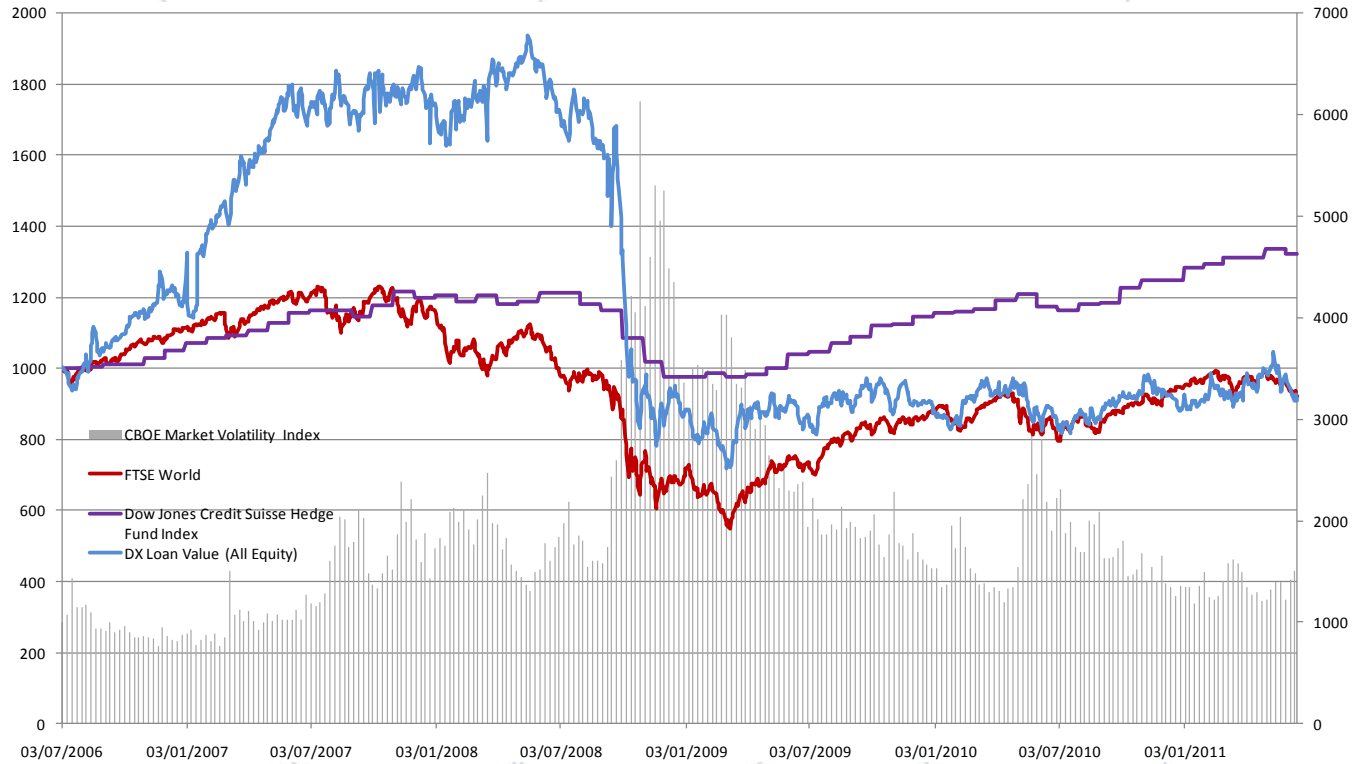
Q. No.	Question	Answer
	information?	
12.4	What would be the feasibility of adapting the technology infrastructure supporting existing reporting requirements to support real time short position collection and dissemination?	It would be feasible for the exchanges and market data vendors to adapt the current infrastructure.
12.5	Would short position data developed from existing systems be less meaningful than data from a new system designed for this purpose? Why or why not?	It would probably be more cost effective to leverage existing infrastructure as a general rule, however 'as soon as practicable' and threshold reporting may require a new system but still be more cost effective and meaningful both for market participants as well as for the regulator.
13.1	What would be the direct, quantifiable costs of short position reporting for those compiling, reporting, collecting, or disseminating the data?	Data Explorers, like other market data vendors, continuously expands the range of asset classes and historical data depth across the universe of securities financing trade information. As part of our current plans to ingest and publish more frequent data, we would look to ingest, cleanse, publish and store a consolidated tape within our existing development plans and manage costs within our existing infrastructure. We look forward to evaluating a detailed specification in order to be able to provide accurate cost and development plan details; however below is our initial assessment: - The incremental costs to Data Explorers would include extended data storage, software development for file ingest, errata production and mapping, addition of new fields to the Data Explorers publishing system. It is not envisaged that these costs would be significant. - Data Explorers products are built upon our proprietary Securities Lending Platform (SLP). The SLP provides data import, data storage, administration applications and reporting services. Data transfer and import is performed periodically 24/7 to capture source data as soon as it is made available from client systems. This system would be appropriate for capturing this data. - We have a private network segment for production web services and a second segregated DMZ network segment for "unsecured" FTP services at Rackspace. Our production network currently comprises 10 load balanced web / application servers and 6 database servers in addition to firewall, load balanced switch and gigabit Ethernet switches and associated data communications infrastructure. We currently utilise 2.1 terabytes of monthly outgoing bandwidth with technical performance SLAs of 100% network uptime and 1-hour hardware replacement guarantees. This would provide the infrastructure required for this project. - Data Explorers operate on a quarterly software development cycle and it is anticipated this project could be delivered within one quarter. The steps we would take to implement this system are: Investigation: - Specification of the consolidated tape file format including update frequency for publication and errata, symbology mapping, error checking for duplicate or malformed fields, field formats, field flags, procedures for refetching files and file transmission protocols. - Specification of quality checks both automatic and manual for file ingest - Specification of storage requirements including data security, hot swop live recovery, projected data storage size and archival storage - Specification of standard mapping protocols for identity extraction - Preferences for data publication requirements as file feeds, online access, API, Excel data, syndication, etc. - Quality of Service targets including error reporting, system uptime, system processing turnaround time Development and testing:

Q. No.	Question	Answer
		- Ingest file translator including file format, error checking and mapping - Database design and implementation - Publishing design and implementation A more detailed plan can be submitted following evaluation of the detailed specifications for this project.
13.2	Please differentiate implementation costs from ongoing costs and include opportunity costs. How feasible would it be for brokers, exchanges, and others to create or modify a reporting and dissemination system?	See 13.1
13.3	What would be the particular technological challenges faced in creating or modifying a reporting and dissemination system? Responses based on the costs of implementing the 2007 modifications to short interest reporting31 or the 2008 implementation of Form SH32 are particularly requested.	---
14.1	How would the establishment of a significant reporting threshold, which would limit short position reporting requirements to holders of significant net short positions, affect costs and the utility of the short position information? If reporting thresholds would be useful, would thresholds at the 5% level used under Section 13(g) of the Exchange Act or the 0.25% level used in former Form SH33 be appropriate, or would a lower threshold, such as that used in the U.K. model, be preferable?34	Costs would be significantly reduced if the threshold were to be the same as long positions. Based on Data Explorers data below (Exhibits E and F), on average US short interest is around 2.5% of shares outstanding, slightly higher than for the global markets due to the more advanced and efficient nature of the US financial market. On any given day approximately 30% (27%) of short positions would fall above the 5% threshold as per Exhibits G which shows data for the 30th of May 2011. This would allow the regulator to capture a significant proportion of positions without requiring full reporting. **Exhibit E. Global Average Large Cap and Small Cap short interest as % of shares outstanding** 

Q. No.	Question	Answer
		Source: Data Explorers **Exhibit F. US Average Short Interest as % of shares outstanding**  **Exhibit G. US and Global % of securities within each short interest threshold for May 30th, 2011**  *Source: Data Explorers*

Q. No.	Question	Answer
14.2	Or would a higher threshold be appropriate? Please explain why or why not.	Higher thresholds would be desirable as the public disclosure of ~30% of positions with the name of the shorting entity may have a significant impact on that security, the market, and affect overall market participants behavior to a material level.
14.3	Would thresholds (computed on a net basis) at U.K. levels (or the lower levels being contemplated by the E.U.)35 capture ordinary course, bona fide market maker positions, or would they tend generally to capture only the positions of investors taking a view as to the stock's future price direction?	According to Data Explorers data, for the period between November 2008 and November 2010, the UK disclosure regime highlighted the following: - Short positions over the threshold seem to be concentrated with very few players. According to Data Explorers data, of around 230 funds who would have reported short positions above the threshold for that period, 13 funds accounted for over 50% of the disclosure instances, and 80% of the disclosures were done by only 55 Funds - Short positions over the threshold seem to be spread out across a variety and number of issuers, with disclosures including 187 issuers, although short positions over the threshold seem to have been concentrated on a small number of them, with only 20% of issuers in that group having over 10 disclosure instances, and only 10% having over 20 disclosure instances. It is not possible to be certain as to which such positions are bona fide market maker positions, hedging or investors taking a view as to the stock's future price direction.
14.4	Would a general exemption from position reporting (or public position reporting) for market makers be appropriate? Why or why not?	It would be appropriate to protect their market making activities.
15.1	How should experiences with short sale position reporting regimes in foreign jurisdictions36 inform the analysis of feasibility, benefits, and costs?	**Global market context:** The chart below shows the behavior of the securities lending market underpinning short selling since 2006. The data shows as significant process of deleveraging as the market contracted during 2008, with short positions being closed at the time the market was rapidly declining. See Exhibit H below.

Q. No.	Question	Answer
		Exhibit H. Global market behavior and on loan balances since 2006 (indexed)

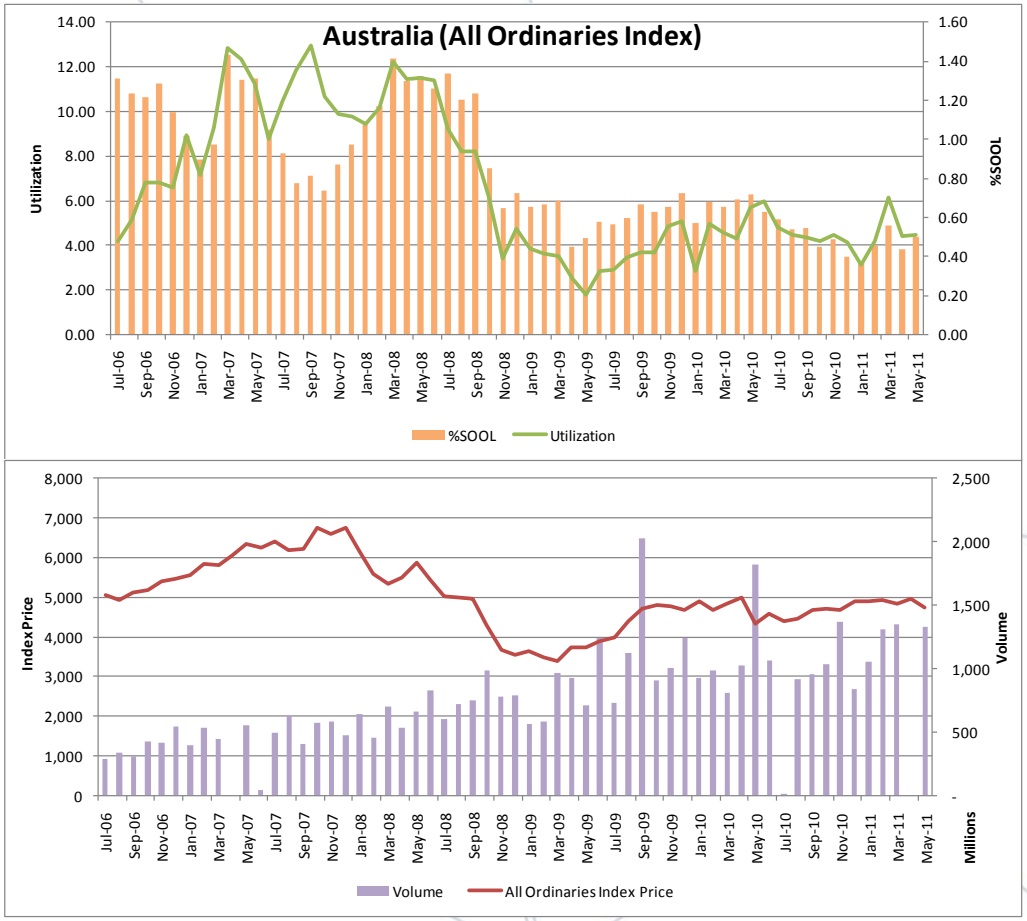


Source: Data Explorers, Factset

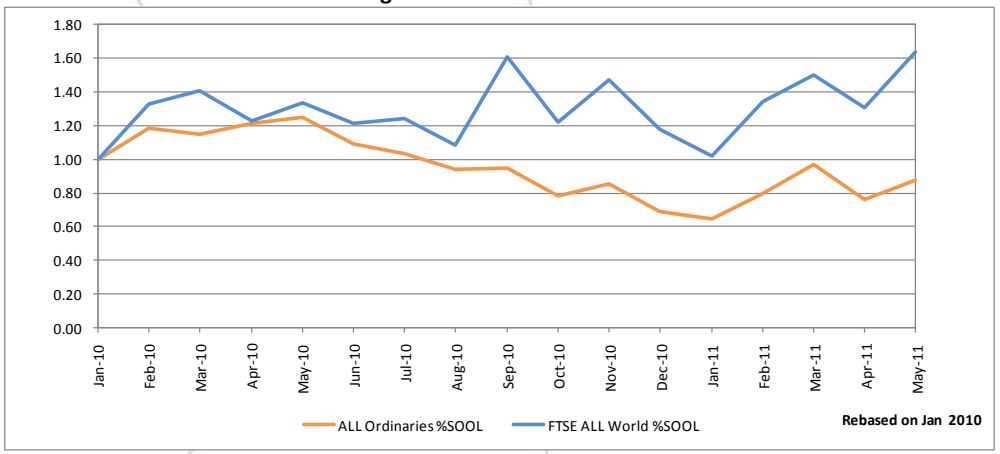
UK: The implementation of CREST disclosure regime benefited mainly data-hungry institutions based on Data Explorers experience. The implementation of threshold reporting enabled a degree of transparency into trading strategies and resulted in a degree of herd behavior as stated above.

Australia: Short selling volumes in Australia declined significantly from the implementation of short selling bans and have not recovered even as global volumes trend towards recovery. The January 2010 implementation of regulation seems to coincide with a decoupling of that market from the global recovery trend – see Exhibit J.

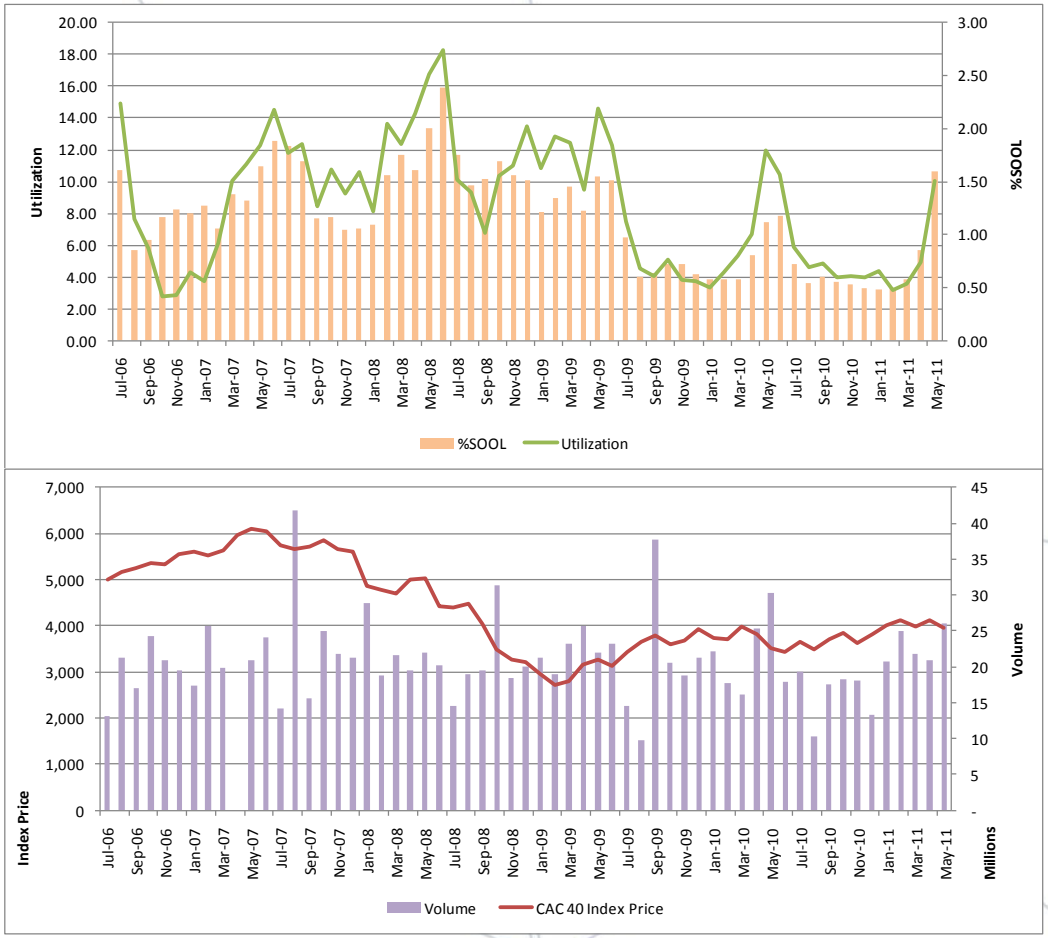
Q. No.	Question	Answer
		Exhibit I. % Shares out on loan for securities listed in Australia



Source: Data Explorers

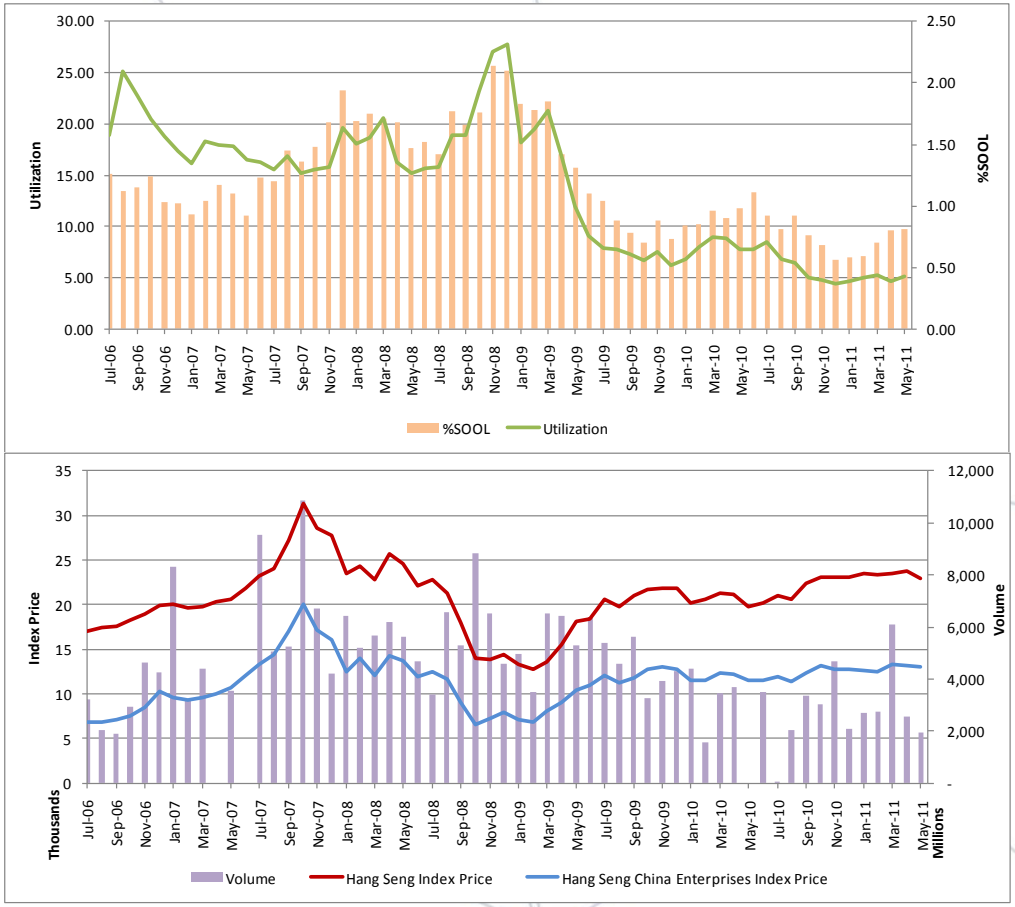
Q. No.	Question	Answer
		Exhibit J. Australia Shares Outstanding on Loan vs. Global Market  *Source: Data Explorers* **France:** It is too early to say what the impact has been of the regulatory disclosure regime implemented in February. Exhibit K below shows the behavior of the French market in aggregate over the last two years. The recent spike is due to dividend seasonal movements, there seems to be a generalized reduction in activity which may or may not be related to disclosure uncertainty in that market.

Q. No.	Question	Answer
		Exhibit K. Utilization and % shares out on loan for securities listed in France



Source Data Explorers

Hong Kong: The Hong Kong experience may provide some parameters for the SEC study. Anecdotal evidence from local market participants is that players do seek to modify their behavior due to the new reporting requirements. Data Explorers data shows market activity has slowed down significantly since the initiation of the regulatory process although increasing again in recent times -see Exhibit L below.

Q. No.	Question	Answer
		Exhibit L. Hong Kong short selling activity and market levels  *Source: Data Explorers*
15.2	How relevant are any analyses of other reporting regimes to the Division's study?37	See above.
15.3	The Commission requests information on any relevant studies not cited in this request for comment.	---

Q. No.	Question	Answer
16.1	What benefits, costs, or unintended consequences would flow from adding these transaction marks to the Consolidated Tape?	---
16.2	Who would use these marks, and how?	See Question 9.3
	Would data from the Consolidated Tape be accessible to the market participants who are most interested in short selling information?	Yes. See Question 9.3 for expected adoption pattern.
16.3	Would the Consolidated Tape data be too voluminous to be used directly by interested market participants?	It would not be too voluminous for larger players and those with program trading applications. It would be too voluminous and difficult to access for smaller players and non-professional investors.
16.4	How would the Consolidated Tape marks affect the behavior of short sellers and other investors?	The effect is expected to be the same as with short selling position disclosure.
16.5	Would Consolidated Tape marks help or hinder long-term investors in making "efficient investments?"38	The effect is expected to be the same as with short selling position disclosure.
16.6	Would market commentators and others use Consolidated Tape marks to help the public better understand markets?	Market commentators may need more assistance in interpreting the data and potentially in accessing it and consuming it.
16.7	Could such marks help to better detect, deter, or prevent identified short selling abuses?	The effect is expected to be the same as with short selling position disclosure.
16.8	Alternatively, could such marks themselves present opportunities for alleged unfair or otherwise abusive market practices, such as bear raids or short squeezes?	The effect is expected to be the same as with short selling position disclosure.
16.9	Would real time Consolidated Tape marks lead to copycat trading?	The effect is expected to be the same as with short selling position disclosure.
16.10	How would Consolidated Tape marks affect investor confidence?	The effect is expected to be the same as with short selling position disclosure.
17.1	Please discuss the feasibility, benefits, and costs related to the "short sale," "market maker short," and "buy-to-cover" marks specifically, and the effects of any choices that would be made when defining such terms. Would there be a trade-off between defining the trades that would be subject to these marks for maximum utility and accuracy to investors, and minimizing implementation costs by building on existing definitions and order marking infrastructure?39	These marks would be valuable in forensic analysis of suspected abuses. Additional information is always of value to Algorithmic and High Frequency Traders.
17.2	If so, how should the tension between these goals be best resolved?	---
17.3	Would there be any other potential issues associated with the accuracy or clarity of Consolidated Tape marks?	---

Q. No.	Question	Answer
17.4	Would the Consolidated Tape marks present possibilities for misinterpretation of the data that could impact any benefits and costs?	The effect is expected to be the same as with short selling position disclosure.
18.1	How would any additions to Consolidated Tape marks affect liquidity, volatility, price efficiency, competition, and capital formation?	See Executive Summary
18.2	To what extent, if any, would such data deter short selling activity not associated with abusive market practices, but that enhances market quality, for example, by revealing trading strategies?	See Executive Summary
18.3	What are the consequences of such deterrence?	See Executive Summary
18.4	Would any additions to Consolidated Tape marks have consequences (including benefits or costs) for equity-related securities markets, such as options or other derivative markets, convertible bond or other debt markets? If so, please explain.	See Question 7.2
18.5	What would the feasibility, benefits, and costs be if this real time reporting information were to be made public on a delayed basis?	The key benefit of delayed public disclosure is the prevention of unintended consequences as described above. Weekly or bi-weekly reporting would be sufficient to provide market sentiment parameters to professional and individual investors and create a level playing field.
18.6	What length of delay might best balance any benefits and costs?	A number of DX client trade facilitation desks (who mainly provide short term liquidity to clients) have indicated that they need 5 working days to unwind most large positions and would have to reduce their facilitation capacity (i.e. market liquidity) if this period was shortened.
19.1	What would be the direct, quantifiable costs of adding the additional fields to the Consolidated Tape to support new marks?	There would be increased processing, maintenance and storage requirements across market participants, exchanges and vendors.
19.2	Please differentiate implementation costs from ongoing costs and include opportunity costs. How feasible would it be for brokers, exchanges, and others to modify order management systems, or other systems, for these marks?	See 13.1
19.3	What would be the potential technological challenges faced in implementing these marks?	See 13.1
19.4	Would the Consolidated Tape bear significant implementation or ongoing costs? For example, would capacity requirements be significantly higher?	Capacity requirements would be higher in order to accommodate the additional data fields, storage requirements would be too.

Q. No.	Question	Answer
19.5	Would vendors and others who receive feeds from the Consolidated Tape bear significant implementation or ongoing costs? Responses based on the costs of implementing Regulation SHO Rule 201,40 Regulation NMS,41 and Form SH42 are particularly requested.	Vendors would incur additional costs but those would depend on their internal cost structures.
20.1	What would be the benefits and costs (including the direct, quantifiable costs) of conducting a pilot for the Consolidated Tape marking?	Participants in a pilot scheme would potentially incur similar costs as in a production environment due to the real time nature of the reporting requirement, unless the pilot were implemented in an 'as soon as practicable' manner.
20.2	Would a pilot for Consolidated Tape marking be feasible?	It would be feasible but potentially not cost effective as the systems would have to be modified as in production for the purposes of the pilot due to the real time nature of the reporting requirement.
20.3	Would the direct, quantifiable costs of implementing and maintaining a pilot be any less, or more, than those of implementing and maintaining Consolidated Tape marking on all listed issuers?	Costs could be less depending on the requirements for the pilot. A delayed reporting pilot could be run to gather and analyze the data. That may provide enough information to the regulators with respect to a decision to implement fully or not.
20.4	Would market participants be likely to behave differently during a pilot, for example by hesitating to develop new trading strategies?43	Market participants may want to wait and see the impact of the pilot on the market and ensure their trades are not transparent to the market considering a pilot would have a limited number of participants and may make that more feasible for example. They may also want to analyze any other unintended consequences of the data becoming available. If sufficient market participants were to do so, the data from the pilot would not be useful. Anecdotal evidence from Hong Kong reflects changes to the behavior by market participants who now bear in mind the reporting requirement whenever executing a trade. This is the case even if the reporting requirement is private up to a certain threshold. Data from the UK shows the risk of transparency to trading strategies in significant.
21.1	What would be the benefits and costs of the voluntary component of the pilot? What types of issuers would likely volunteer to participate in a pilot?	Issuers themselves would not be in a position to participate in a pilot in terms of reporting of short positions in their issued securities. Large investors and prime brokers would be most likely to participate in a voluntary pilot than smaller players due to the cost implications of the pilot. Please refer to Question 20
21.2	How would this self-selection affect the usefulness of any data derived from a pilot?	Larger players may provide a representative sample of the overall market –but only in the case their behavior is not affected by the pilot being in place.
21.3	Are there other consequences from a voluntary pilot?	Large players would be in a stronger position to participate in a voluntary pilot due to cost implications. This may create a disadvantage for smaller players in the case the regime were implemented as they would be less well prepared for full implementation and would also not be able to provide such detailed feedback relevant to their business to the regulator.
21.4	To maximize the utility of any pilot, should the pilot be designed to limit participation in a way that facilitates comparisons of trading in pilot companies and trading in non-pilot companies?	The pilot ideally would have a representative selection of players across the industry with a balance of players reflecting the relative composition of the market. The regulator may need to provide financial support to cover costs of such voluntary pilot for smaller players for example.
21.5	If participation should be limited, how should the Commission determine which volunteers to include or exclude from the pilot?	The Commission should work with the industry to understand the market behavior and be able to ensure appropriate representation in the pilot.

Q. No.	Question	Answer
22.1	How should experiences with transaction marking regimes in foreign jurisdictions44 inform analysis of the feasibility, benefits, and costs?	---
22.2	Are there any analyses of transaction marking regimes that are relevant to the Division's study?	---
23.1	To what extent would Consolidated Tape marks be a substitute or compliment to real time short position reporting?	They would complement real time short position reporting but may provide limited additional value if both reporting systems were in place.
23.2	How would the benefits and costs of any Consolidated Tape marks be impacted if real time position reporting existed and vice versa?	Either regime would be sufficient. Implementation of both regimes would result in significant cost implications for market participants.

[i] Mark has authored many papers and books on the subject of securities finance including An Introduction to Securities Lending and represented the industry with regulators and industry bodies. He is a frequent speaker and moderator at industry conferences and often appears in the media - both broadcast and print. Mark is recognised as an industry leader and was recently presented with the Global Investor/ISF Lifetime Achievement in recognition of his contribution to securities financing over the last 25 years. He is also a member of the Global Custodian Hall of Fame. Prior to founding Data Explorers, Mark graduated from the London School of Economics and held management roles at LM Moneybrokers, Goldman Sachs and Lehman Brothers.

[ii] Data Explorers' anecdotal evidence from market participants in jurisdictions with disclosure shows hedge funds do modify their behavior sometimes moving away from strategies which require disclosure and may expose them, or at other times leveraging such disclosure regime to signal the market

[iii] SEC, Statement by Commissioner Troy Paredes, Oct 2009

[iv] This effect was experienced by Data Explorers in 2002 with the implementation of the CREST reporting system in the UK. Instead of leveling the playing field for the individual investor and even long-only manager and pension fund managers, the keenest and fastest adopters of this data were hedge funds and large prime brokers or 'data hungry' institutions. Data Explorers has since been working with the long-only investment community, the media and general public to provide synthesized, aggregated and contextual interpretation of the data

[v] Oliver Wyman, 'The effects of short selling public disclosure of individual positions on equity markets' 2011

[vi] Deutsche Bank Quantitative Research Team, 'Signal Processing: The Long and the Short of It', 2011

[vii] Ringgenberg, M. 'Short Sales, Volatility, and Heterogeneous Beliefs', 2010

[viii] Deutsche Bank Quantitative Research Team, 'Signal Processing: The Long and the Short of It', 2011

[ix] Data Explorers' anecdotal evidence from market participants in jurisdictions with disclosure shows hedge funds do modify their behavior sometime s moving away from strategies which require disclosure and may expose them, or at other times using disclosure to signal the market

[x] SEC, Statement by Commissioner Troy Paredes, Oct 2009

[xi] SEC, Statement by Chairman Cox for Wall St Journal, July 2008