



**CHARTERED SECRETARIES  
AUSTRALIA**

*Leaders in governance*

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## **Apply five per cent rule to disclosure of margin loans**

Directors and executives holding more than five per cent of a company's issued securities subject to a margin loan should be required to disclose their interests, claims Chartered Secretaries Australia (CSA).

As an interim measure, CSA believes reforms could be implemented efficiently and effectively by amending the ASX Listing Rules to require directors to notify the company if they have a five per cent stake or more in the company in issued securities subject to margin loans. As is the case now with directors' share trading, the company would then be required to inform the market.

The longer-term solution, however, is to amend the Corporations Act, making it mandatory for directors to comply with this disclosure requirement. This would have the added advantage of giving the Australian Securities and Investments Commission (ASIC) much tougher enforcement powers in the event of non-compliance.

"We are aware that the issue of whether or not disclosure of security interests or other third-party rights in directors' shareholdings should be regulated is complex and controversial," CSA's chief executive Mr Tim Sheehy said.

"However, our members are of the strong view that good governance is about keeping the market fully informed.

"In arriving at this position, we took into account the need to keep the market informed, the need to balance the benefits against the costs of any enhanced disclosure requirements and the legitimate interest of directors in the privacy of their personal financial affairs," Mr Sheehy said.

"We are certainly not interested in giving information to short sellers and others that would allow them to target particular companies or directors.

"But our members don't think that it's good governance for a director to enter into substantial financial arrangements that, if disclosed, could adversely impact that company's shares.

"We are also concerned that such financial arrangements can give rise to a conflict of interest between the director and the company. While substantial shareholders of a company who are not directors could also have arrangements in place that could have a material impact on the share price, they do not have a fiduciary duty to act in the best interests of that company," Mr Sheehy said.

The advantage of tying disclosure to a five per cent threshold is that boards are not placed in the difficult position of enquiring into directors' personal financial arrangements and circumstances to determine whether a particular margin loan or other arrangement is material and should be disclosed under the continuous disclosure regime.

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“More often than not, companies would be unable to determine materiality without examining the financial arrangements of directors. It is unlikely they would have access to that sort of information and nor should they,” Mr Sheehy said.

“For example, a director’s shares in one company may form part of a larger portfolio to which the security interest applies, and judging materiality would involve examination of the entire portfolio.

“Now that’s a breach of a director’s privacy,” he said.

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***About Chartered Secretaries Australia***

Chartered Secretaries Australia (CSA) is the peak professional body delivering accredited education and the most practical and authoritative training and information on governance, as well as thought leadership in the field.

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