

Industry Release



Australian Securities Lending Association
website: www.asla.com.au

The Australian Securities Lending Association (ASLA) welcomes the ruling of Justice Finkelstein on Friday in the Federal Court of Victoria in the case of *Beconwood v ANZ Banking Group Limited* (2008) FCA 594.

Justice Finkelstein rejected the claim by the plaintiffs that securities lending transactions were not an outright transfer of title and should be re-characterised as secured loans. This judgement confirmed that a securities lending transaction does not confer any equity of redemption of other equitable interest. Via this ruling Justice Finkelstein held that securities lending transactions were an outright transfer of property and that assets were transferred from the lender to the borrower without charge.

The transfer of title is fundamental to the purpose of securities lending as a facilitator to liquidity in the equities financing sector. This is because the receiver of the lent securities must be in a position to then onward transfer these securities to a third party.

Natalie Floate, Chairman of ASLA, said: "This ruling will give confidence to market participants that standard agreements such as the Australian Securities Lending Agreement are legally robust."

"ASLA is extremely pleased with the ruling by Justice Finkelstein. Although there has been precedent in similar rulings overseas historically, this is the first time in Australia that the transfer of title under a standard securities lending agreement has been challenged in this manner, and both the members of ASLA, and our global peers, are pleased that the Federal Court has confirmed the validity of Securities Lending contracts.

Securities Lending has been an essential facilitator to the Australian equities markets for over 35 years without incident. This ruling will enable the industry to continue to support the growth of the Australian equities market," Ms Floate said.

Notes to the Editor:

1. The Australian Securities Lending Association (ASLA) was formed in 1991 to represent the common interests of participants in the wholesale equities financing sector. ASLA currently has over 30 members comprising Investment Banks, Custodian and Commercial Banks, Legal firms and Information Technology providers. Please refer to our website www.asla.com.au for more details.

2. The Australian Securities Lending Agreement (AMSLA) was drafted in 1996 by Mallesons Stephen Jacques Solicitors, being based on global standard agreements but customised to cater for the Australian market.

3. A definition of securities lending: Securities lending is the temporary transfer of securities from a lender to a borrower collateralised by cash or securities. Securities lending adds liquidity and efficiency to the market place, supporting trading activity and strategies in all major markets. Activity has been underway since the early 1970's and the average value of securities on loan in Australia has been estimated recently at over \$85 billion.