

EXPOSURE DRAFT

2008

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT (23/09/2008)

Corporations Amendment (Short Selling) Bill 2008

No. , 2008

(Treasury)

**A Bill for an Act to amend the *Corporations Act*
2001, and for related purposes**

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1 **A Bill for an Act to amend the *Corporations Act***
2 ***2001*, and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Corporations Amendment (Short*
6 *Selling) Act 2008*.

7 **2 Commencement**

8 (1) Each provision of this Act specified in column 1 of the table
9 commences, or is taken to have commenced, in accordance with
10 column 2 of the table. Any other statement in column 2 has effect
11 according to its terms.
12

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Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Schedule 1	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 12 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	

1 Note: This table relates only to the provisions of this Act as originally
2 passed by both Houses of the Parliament and assented to. It will not be
3 expanded to deal with provisions inserted in this Act after assent.

4 (2) Column 3 of the table contains additional information that is not
5 part of this Act. Information in this column may be added to or
6 edited in any published version of this Act.

7 **3 Schedule(s)**

8 Each Act that is specified in a Schedule to this Act is amended or
9 repealed as set out in the applicable items in the Schedule
10 concerned, and any other item in a Schedule to this Act has effect
11 according to its terms.

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Short sales amendments **Schedule 1**

1
2
3
Schedule 1—Short sales amendments

4
Corporations Act 2001

5
1 Subsection 1020B(1)

6 After “in this section”, insert “, section 1020BA, section 1020BB”.

7
2 After section 1020B

8 Insert:

9
10
**1020BA Disclosure of short sale covered by securities lending
arrangement of listed 1020B products—client disclosure**

11 (1) Subsection (3) applies if:

12 (a) either:

13 (i) a financial services licensee, on behalf of a person (the
14 *seller*), makes a sale in this jurisdiction of
15 section 1020B products on a licensed market to a buyer;
16 or

17 (ii) a financial services licensee (the *seller*), on its own
18 behalf, makes a sale in this jurisdiction of section 1020B
19 products on a licensed market to a buyer; and

20 (b) before the time of the sale, the seller had entered into or
21 gained the benefit of a securities lending arrangement (see
22 subsection (10)); and

23 (c) at the time of the sale, the seller intends that the securities
24 lending arrangement will ensure that some or all the
25 section 1020B products can be vested in the buyer; and

26 (d) the seller is not required under subsection 1020B(5) to
27 provide information in relation to the sale; and

28 (e) the following requirements are satisfied (if applicable):

29 (i) if regulations made for the purposes of this
30 subparagraph specify a kind of section 1020B product—
31 the section 1020B products are of that kind;

32 (ii) if regulations made for the purposes of this
33 subparagraph specify a kind of section 1020B product—
34 the section 1020B products are not of that kind;

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Schedule 1 Short sales amendments

1 (iii) if regulations made for the purposes of this
2 subparagraph specify circumstances in which the sale is
3 made—the sale is made in those circumstances.

4 (2) Subsection (3) applies regardless of whether the seller is inside or
5 outside Australia.

6 *Offence*

7 (3) The seller must:

8 (a) give the entity mentioned in subsection (4) particulars
9 specified in the regulations in relation to the circumstances
10 mentioned in paragraphs (1)(a), (b) and (c); and

11 (b) do so:

12 (i) on or before the time specified in the regulations; and

13 (ii) in the manner specified in the regulations.

14 Note: Failure to comply with this subsection is an offence (see subsection
15 1311(1)).

16 (4) The entity is:

17 (a) if subparagraph (1)(a)(i) applies:

18 (i) the financial services licensee mentioned in that
19 subparagraph; or

20 (ii) if the regulations specify another entity—that entity; or

21 (b) if subparagraph (1)(a)(ii) applies:

22 (i) the operator of the licensed market mentioned in that
23 subparagraph; or

24 (ii) if the regulations specify another entity—that entity.

25 *Regulations*

26 (5) Regulations made for the purposes of this section may specify a
27 matter or thing differently for different kinds of persons, things or
28 circumstances. For example, the regulations may:

29 (a) specify a matter or thing differently for different kinds of
30 sellers mentioned in subsection (1); and

31 (b) specify a time differently for different kinds of
32 circumstances.

33 Note: For specification by class, see subsection 13(3) of the *Legislative*
34 *Instruments Act 2003*.

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Short sales amendments **Schedule 1**

1 (6) Subsection (5) does not limit the regulations that may be made for
2 the purposes of this section.

3 *Interpretation*

4 (7) To avoid doubt, for the purposes of this section, treat the entering
5 into of an agreement to sell section 1020B products as the sale of
6 the products.

7 (8) To avoid doubt, for the purposes of this section, treat a financial
8 services licensee as making a sale on behalf of a person if the sale
9 is, in economic substance, made by the licensee for the person.

10 Example: A request that the sale be made is passed from the person to the
11 financial services licensee through a chain of intermediaries.

12 (9) For the purposes of this section, treat a crossing of section 1020B
13 products as being made on a licensed market.

14 (10) In this section:

15 **crossing**: a **crossing** of section 1020B products is a sale of
16 section 1020B products made by a financial services licensee:

- 17 (a) on behalf of both the buyer and the seller of the products; or
18 (b) on behalf of the buyer of the products and on its own behalf
19 as seller of the products; or
20 (c) on behalf of the seller of the products and on its own behalf
21 as buyer of the products.

22 **section 1020B products** has the meaning given by subsection
23 1020B(1).

24 **securities lending arrangement** means an arrangement under
25 which:

- 26 (a) one entity (the **lender**) agrees that it will:
27 (i) deliver particular securities, managed investment
28 products or other financial products to another entity
29 (the **borrower**) or to an entity nominated by the
30 borrower; and
31 (ii) vest title in those products in the entity to which they
32 are delivered; and
33 (b) the borrower agrees that it will, after the lender does the
34 things mentioned in paragraph (a):
-

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Schedule 1 Short sales amendments

- 1 (i) deliver the products (or equivalent products) to the
2 lender or to an entity nominated by the lender; and
3 (ii) vest title in those products (or those equivalent
4 products) in the entity to which they are delivered.

5 **1020BB Disclosure of short sale covered by securities lending**
6 **arrangement of listed 1020B products—licensee**
7 **disclosure**

- 8 (1) Subsection (2) applies if:
9 (a) the seller mentioned in subparagraph 1020BA(1)(a)(i) gives a
10 financial services licensee information in accordance with
11 section 1020BA in relation to a sale of section 1020B
12 products on a licensed market; and
13 (b) the following requirements are satisfied (if applicable):
14 (i) if regulations made for the purposes of this
15 subparagraph specify a kind of section 1020B product—
16 the section 1020B products are of that kind;
17 (ii) if regulations made for the purposes of this
18 subparagraph specify a kind of section 1020B product—
19 the section 1020B products are not of that kind;
20 (iii) if regulations made for the purposes of this
21 subparagraph specify circumstances in which the sale is
22 made—the sale is made in those circumstances.

23 *Offence*

- 24 (2) The financial services licensee must:
25 (a) give the entity mentioned in subsection (3) particulars
26 specified in the regulations in relation to the circumstances
27 mentioned in paragraph (1)(a); and
28 (b) do so:
29 (i) on or before the time specified in the regulations; and
30 (ii) in the manner specified in the regulations.

31 Note: Failure to comply with this subsection is an offence (see subsection
32 1311(1)).

- 33 (3) The entity is:
34 (a) the operator of the licensed market mentioned in
35 paragraph (1)(a); or

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1 (b) if the regulations specify another entity—that entity.

2 *Regulations*

3 (4) Regulations made for the purposes of this section may specify a
4 matter or thing differently for different kinds of persons, things or
5 circumstances. For example, the regulations may:

6 (a) specify a matter or thing differently for different kinds of
7 sellers mentioned in subsection (1); and

8 (b) specify a time differently for different kinds of
9 circumstances.

10 Note: For specification by class, see subsection 13(3) of the *Legislative*
11 *Instruments Act 2003*.

12 (5) Subsection (4) does not limit the regulations that may be made for
13 the purposes of this section.

14 *Interpretation*

15 (6) To avoid doubt, for the purposes of this section, treat the entering
16 into of an agreement to sell section 1020B products as the sale of
17 the products.

18 (7) For the purposes of this section, treat a crossing of section 1020B
19 products as being made on a licensed market.

20 (8) In this section:

21 *crossing* has the meaning given by subsection 1020BA(10).

22 *section 1020B products* has the meaning given by subsection
23 1020B(1).

24 **3 Subsection 1200F(1) (table item 5)**

25 After “sections 1020B”, insert “, 1020BA, 1020BB”.

26 **4 Schedule 3 (after table item 301B)**

27 Insert:

301BA	Subsection 1020BA(3)	25 penalty units or imprisonment for 6 months, or both.
301BB	Subsection 1020BB(2)	25 penalty units or imprisonment for 6 months, or both.

28
