



Corporations Amendment Regulations 2009 (No.)¹

Select Legislative Instrument 2009 No.

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Corporations Act 2001*.

Dated 2009

Governor-General

By Her Excellency's Command

[DRAFT ONLY – NOT FOR SIGNATURE]

Minister for Financial Services, Superannuation and Corporate
Law

CONSULTATION DRAFT

1 Name of Regulations

These Regulations are the *Corporations Amendment Regulations 2009* (No.).

2 Commencement

- (1) These Regulations commence as follows:
 - (a) on the commencement of Schedule 3 to the *Corporations Amendment (Short Selling) Act 2008* — regulations 1 to 3 and Schedule 1;
 - (b) on the day specified by the Minister by instrument in writing for this paragraph — regulation 4 and Schedule 2.
- (2) However, if regulation 4 and Schedule 2 do not commence before 1 April 2010, they commence on that day.

3 Amendment of *Corporations Regulations 2001*

Schedule 1 amends the *Corporations Regulations 2001*.

4 Amendment of *Corporations Regulations 2001*

Schedule 2 amends the *Corporations Regulations 2001*.

Schedule 1 Amendment

(regulation 3)

[1] Part 7.9, after Division 14

insert

Division 15 Disclosure in relation to short sales covered by securities lending arrangement of listed section 1020B products

7.9.100 Seller disclosure

- (1) For paragraph 1020AB (3) (a) of the Act, the particulars that a seller must give in relation to a sale of a listed section 1020B product where the seller has a presently exercisable and unconditional right to vest the product in a buyer under a securities lending arrangement are as follows:
 - (a) the number of section 1020B products that the seller will vest in the buyer under the arrangement;
 - (b) a description of the product;
 - (c) the name of the entity that issued the product.
- (2) For subparagraph 1020AB (3) (b) (i) of the Act, in relation to particulars mentioned in paragraphs (1) (a), (b), and (c):
 - (a) the seller mentioned in subparagraph 1020AB (1) (a) (i) of the Act must give the particulars at the time of entering into an agreement to sell; and
 - (b) the seller mentioned in subparagraph 1020AB (1) (a) (ii) of the Act must give the particulars on or before 9 am on the next business day after entering into an agreement to sell.

7.9.101 Licensee disclosure

- (1) For paragraph 1020AC (2) (a) of the Act, the particulars that a financial services licensee must give in relation to information given to the licensee under section 1020AB of the Act in relation to a sale of a listed section 1020B product are the information specified in paragraphs 7.9.100 (1) (a), (b) and (c).
- (2) For paragraph 1020AC (2) (b) of the Act:
 - (a) the time for disclosure of the information is on or before 9 am on the next business day after the licensee is given the information under section 1020AB of the Act; and
 - (b) the manner for disclosure of the information is by electronic transmission to the operator.

7.9.102 Public disclosure of information

- (1) For paragraph 1020AD (2) (a) of the Act, the particulars which the operator of a licensed market must publicly disclose in relation to information given to the operator under section 1020AB or 1020AC of the Act in relation to a sale of a listed section 1020B product are the total number of each kind of section 1020B product that has been sold on a particular day and disclosed to the operator under section 1020AB or 1020AC of the Act.
- (2) For subparagraph 1020AD (2) (b) (i) of the Act, the time for the disclosure of the information mentioned in subregulation (1) is 1 business day after the day the agreements to sell were entered into.
- (3) For subparagraph 1020AD (2) (b) (ii) of the Act, the manner of public disclosure of the information mentioned in subregulation (1) is by publication:
 - (a) on the operator's website; or
 - (b) in any other form that is easily accessible by the public.

Schedule 2 Amendment

(regulation 4)

[1] Before regulation 7.9.100

insert in Division 15

7.9.99 Meaning of *short position*

- (1) In this Division, a *short position* is a position in relation to a section 1020B product in a listed entity where the amount of the product which a person has is less than the amount of the product which the person has an obligation to deliver.
- (2) In subregulation (1), the person has the product if:
 - (a) the person is holding the product on the person's own behalf; or
 - (b) another person is holding the product on the person's behalf; or
 - (c) the person has entered into an agreement to buy the product but has not received it; or
 - (d) the person has vested title in the product in a borrower, or in an entity nominated by the borrower, under a securities lending arrangement.
- (3) In subregulation (1), the product which the person has an obligation to deliver is the product which the person:
 - (a) has an obligation to deliver under a sale agreement where the product has not been delivered; or
 - (b) has an obligation to vest title to in a lender under a securities lending arrangement; or
 - (c) has any other non-contingent legal obligation to deliver.

[2] Paragraph 7.9.100 (1) (c)

omit

the product.

insert

the product;

[3] After paragraph 7.9.100 (1) (c)

insert

- (d) the seller's short position as at the close of business 3 business days before the day the particulars must be given under subregulation (3).

[4] After subregulation 7.9.100 (2)

insert

- (3) For subparagraph 1020AB (3) (b) (i) of the Act, in relation to particulars mentioned in paragraph (1) (d), the seller must give the particulars:
- (a) on or before 9 am on the third business day after entering into the agreement to sell that causes the short position to occur; and
 - (b) on or before 9 am on each subsequent business day as long as the seller has a short position.
- (4) Paragraph (3) (b) applies whether or not the particulars about the short position have changed from that given on the previous day.
- (5) For subparagraph 1020AB (3) (b) (ii) of the Act, in relation to particulars mentioned in paragraph (1) (d), the seller must give the particulars in the form required by ASIC.
- (6) For subparagraph 1020AB (4) (a) (ii) and (b) (ii) of the Act, in relation to the particulars mentioned in paragraph (1) (d), the entity is ASIC.

[5] After regulation 7.9.100

insert

7.9.100A Seller disclosure of existing short position

- (1) If a seller has a short position which arises from an agreement to sell entered into before commencement of this regulation, the seller must give particulars about the short position as at close of business on the day this regulation commences:
 - (a) on or before 9 am on the third business day after commencement of this regulation; and
 - (b) on or before 9 am on each subsequent business day as long as the seller has a short position.
- (2) The particulars must be given to ASIC in the form required by ASIC.

[6] After subregulation 7.9.102 (1)

insert

- (1A) For paragraph 1020AD (2) (a) of the Act, the particulars which ASIC must publicly disclose in relation to information given to it under section 1020AB of the Act in relation to a sale of a listed section 1020B product are the total of all short positions in a product issued by a listed entity that have been disclosed to ASIC under section 1020AB of the Act on the previous business day.

[7] After subregulation 7.9.102 (2)

insert

- (2A) For subparagraph 1020AD (2) (b) (i) of the Act, the time for the disclosure of the information mentioned in subregulation (1A) is the first business day after the day the information is received.

[8] After subregulation 7.9.102 (3)

insert

- (3A) For subparagraph 1020AD (2) (b) (ii) of the Act, the manner of public disclosure of the information mentioned in subregulation (1A) is by publication:
- (a) on the operator's website; or
 - (b) in any other form that is readily accessible by the public.

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.