

[CO 04/1570]

Licensing relief for some overseas dealers or market makers in derivatives and foreign exchange contracts

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Class Order [CO 04/1570] exempts foreign companies from the need to hold an Australian financial services licence where they are dealing in foreign exchange contracts on similar terms to the exemption in reg 7.6.01(1)(ma).

Regulation 7.6.01(1)(ma) only applies to dealing by foreign counterparties in derivatives. The regulation requires there be an agreement between the counterparties as to how dealing will be undertaken between them. The agreement needs to have been initiated by the Australian counterparty that holds an Australian financial service licence to deal or make a market in derivatives or foreign exchange contracts. The counterparties must also be dealing with each other on their own account.

The class order also exempts foreign companies from the need to hold an Australian financial services licence where the foreign company is involved in making a market in derivatives or foreign exchange contracts.

Australian Securities and Investments Commission Corporations Act 2001 — Paragraph 911A(2)(1) — Exemption

1. The Australian Securities and Investments Commission grants this exemption under paragraph 911A(2)(1) of the *Corporations Act 2001* (the *Act*).
2. A foreign company (the **foreign party**) does not have to hold an Australian financial services licence for the provision of either or both the following financial services:
 - (a) dealing in a foreign exchange contract (the **relevant financial product**);
 - (b) making a market in a derivative (the **relevant financial product**) or a foreign exchange contract.
3. This exemption applies where the financial service is carried out in the following circumstances:
 - (a) the relevant financial product is or is to be issued, acquired or disposed of under an agreement that sets out the terms and conditions for future dealing in the relevant financial

product between the foreign party and the other party to the agreement;

- (b) the other party to the agreement:
 - (i) is a wholesale client in this jurisdiction; and
 - (ii) initiated the agreement; and
 - (iii) holds an Australian financial services licence which permits it to make a market or to deal in the relevant financial product;
- (c) the foreign party is not in this jurisdiction;
- (d) each party is dealing or making a market in the relevant financial product on its own behalf.

Note: This exemption will operate in addition to the exemption from licensing for dealing by overseas counterparties to derivatives under regulation 7.6.01(1)(ma) of the *Corporations Regulations 2001*.

Interpretation

4. In this instrument:

foreign exchange contract has the meaning given by section 761A of the Act;

makes a market has the meaning given by section 766D of the Act; and

wholesale client has the meaning given by section 761G of the Act.

Commencement

5. This instrument takes effect on gazettal.

Dated this 23rd day of December 2004.

Signed by Brendan Byrne
as a delegate of the Australian Securities and Investments
Commission