



Corporations (Low Volume Financial Markets) Exemption Notice 2003

I, ROSS CAMERON, Parliamentary Secretary to the Treasurer, issue this Notice under section 791C of the *Corporations Act 2001*.

Dated 19 December 2003

A handwritten signature in black ink, appearing to read 'Ross Cameron', with a long horizontal flourish extending to the right.

Parliamentary Secretary to the Treasurer

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Part 1 Preliminary

1 Name of Notice

This Notice is the *Corporations (Low Volume Financial Markets) Exemption Notice 2003*.

2 Commencement

This Notice commences on gazettal.

3 Definitions

In this Notice:

Act means the *Corporations Act 2001*.

authorised person, for a provision, means an APS employee on the staff of ASIC who has been authorised to act under the provision.

licensed market has the same meaning as in section 761A of the Act.

low volume financial market means a financial market through which no more than 100 completed transactions, that have a total value (measured by sale price) of not more than \$500 000, are entered into in any 12 month period.

register means the register mentioned in subsection 6 (1).

Section 4

Part 2 Exemption

4 Exemption

- (1) For section 791C of the Act, and subject to Part 3, a low volume financial market is exempt from the operation of Part 7.2 of the Act.
- (2) The low volume financial market is an exempt financial market.

Part 3 Conditions

5 Compliance with conditions

The operator of the market must comply with the conditions in this Part.

6 Conditions relating to registration

- (1) The operator of the market must be named in a register of entities taking advantage of this exemption that is established and kept by ASIC.
- (2) Each of the following must have happened:
 - (a) the operator must have applied to ASIC for inclusion in the register;
 - (b) the following information must have been set out in the application:
 - (i) the structure, or proposed structure, of the market;
 - (ii) the nature of the activities conducted, or proposed to be conducted, on the market;
 - (iii) the size, or proposed size, of the market;
 - (iv) the nature of the financial products that are dealt with, or proposed to be dealt with, on the market;
 - (v) evidence of the capacity of the operator to conduct the market;
 - (vi) for each person who, when the application is made, is a participant in an existing market or proposes to be a participant in a proposed market:
 - (A) the name of the person; and
 - (B) whether the person, in acquiring or disposing of financial products through the market, is or will be acting as an intermediary or as a principal (to the extent known by the operator); and
 - (C) if the person is or will be acting as a principal, whether the person is a retail client or a wholesale client (to the extent known by the operator);
 - (vii) whether the operator, or an associate of the operator, operates any other exempt or licensed market and, if so, details of the market;
- (viii) whether the operator is able to comply with the conditions in this Part;
- (ix) whether the operator, a related body corporate or a director or secretary of the operator has been:
 - (A) the subject of a declaration of contravention in relation to a provision of the Act; or
 - (B) found guilty of an offence under the Act; or
 - (C) disqualified from managing corporations; or

Note For *associate*, see the Act, s 9.

Section 7

- (D) banned or disqualified from providing financial services;
- (c) ASIC or an authorised person must have been satisfied that the market was (or, in the case of a proposed market, was likely to be) a low volume financial market,
- (d) ASIC or an authorised person:
- (i) must have been satisfied that, on being registered, the operator would be able to comply with the conditions in this Part; and
 - (ii) must have had no reason to believe that the operator would not comply with any of the conditions in this Part;
- (e) the name of the operator and a brief description of the market (sufficient to identify it) must have been entered in the register by ASIC or an authorised person.

7 Permissible financial products

The market must facilitate trade only in financial products that:

- (a) are mentioned in paragraphs 764A (1) (a), (b) and (ba) of the Act; and
- (b) cannot be traded on a licensed market.

Note Paragraphs 764A (1) (a), (b) and (ba) of the Act, as in force on 1 July 2003, are set out in the Attachment.

8 Issue of financial products

The market must operate only in relation to financial products that are issued by the operator of the market or by an issuer who has appointed the operator to operate the financial market.

9 Limit on number of markets

A person and the person's associates must not operate more than 2 markets to which this Notice applies.

Note For *associate*, see the Act, s 9.

10 Limit on concurrent operation of licensed market

A person who operates, or whose associates operate, a market to which this Notice applies must not, at the same time, operate a licensed market.

Note For *associate*, see the Act, s 9.

11 Limit on scope of financial products

A person and the person's associates must not operate markets to which this Notice applies in relation to the financial products of more than 2 different issuers.

Note For *associate*, see the Act, s 9.

Section 16

12 Excluded facilities

The market must not have a mechanism for the automatic:

- (a) execution of orders; or
- (b) formation of contracts between market users that enter into a transaction through the market.

13 Settlement service

The operator of the market must not handle the purchase money for the settlement of a transaction entered into through the market unless the operator holds an Australian financial services licence or a dealers licence that authorises it to deal in the financial product to which the transaction relates.

14 Information to be given to new users

- (1) Before a new user of the market uses the market for the first time, the operator of the market must give the user the following information:
 - (a) the market is covered by an exemption under section 791C of the Act;
 - (b) the operator is not licensed under Part 7.2 of the Act;
 - (c) the operator is not subject to the legal obligations that apply to the operator of a licensed market, including the requirement, to the extent that it is reasonably practicable to do so, to do all things necessary to ensure that the market is a fair, orderly and transparent market.

- (2) In this section:

new user, in relation to a market, does not include someone who was a user of the market before the market was covered by the exemption in this Notice.

15 ASIC to be informed of changes to market

The operator of the market must inform ASIC, in writing, of any significant change to the operation of the market (including a significant change to anything set out in the application for inclusion in the register), as soon as practicable after the change occurs.

16 Information about non-compliance with Act

The operator of the market must:

- (a) comply with; and
- (b) inform ASIC, in writing, if it fails to comply with; any provision of Chapter 6CA or 7 of the Act (except to the extent that the operator is exempt from the operation of Part 7.2 of the Act).

Section 17

17 Telling ASIC about non-compliance with conditions

The operator of the market must tell ASIC if the operator fails to comply with any of the conditions in this Part, as soon as practicable after the operator becomes aware of the failure.

18 Telling ASIC about suspected contravention of Act

The operator of the market must tell ASIC if, in the course of operating the market, the operator has reason to suspect that another person has committed, is committing or is likely to commit a contravention of the Act.

19 Assistance to ASIC

The operator of the market must comply with a request from ASIC or an authorised person to assist in monitoring and supervising compliance with the conditions set out in this Notice, including giving ASIC a copy of any records about the operation of the market and allowing ASIC access to any premises of a facility by means of which the market is conducted.

20 Annual report

- (1) The operator of the market must give a written report to ASIC within 45 days after each anniversary of the date of its inclusion in the register.
- (2) The report must state:
 - (a) the total number and total value (measured by sale price) of transactions carried out on the market in each month during the year immediately before the anniversary; and
 - (b) the number of users of the market in the year immediately before the anniversary.

Part 4 Consequences of failure to comply with conditions

21 Failure to comply with conditions

If:

- (a) the operator of an exempt financial market fails to comply with a condition in Part 3; and
- (b) ASIC or an authorised person considers that the nature or extent of the failure warrants removal of the operator's name from the register;

ASIC or an authorised person may remove the operator's name from the register.

22 Removal of operator's name from register

ASIC or an authorised person may remove an operator's name from the register:

- (a) in accordance with section 21; or
- (b) in any of the following circumstances:
 - (i) at the request of the operator;
 - (ii) because the operator is insolvent;
 - (iii) because ASIC or an authorised person is satisfied that the operator no longer operates the market described in the application for registration;
 - (iv) because ASIC or an authorised person has reason to believe (because of previous non-compliance or for other reasons) that it is unlikely that the operator will comply in the future with the conditions in Part 3.

23 Consequences of removal of operator's name from register

A market ceases to be exempt from the operation of Part 7.2 of the Act when notice is given to the operator of the market of removal of the operator's name from the register.

Attachment Paragraphs 764A (1) (a), (b) and (ba) of the Act

(section 7)

764A Specific things that are financial products (subject to Subdivision D)

- (1) Subject to Subdivision D, the following are *financial products* for the purposes of this Chapter:
 - (a) a security;
 - (b) any of the following in relation to a registered scheme:
 - (i) an interest in the scheme;
 - (ii) a legal or equitable right or interest in an interest covered by subparagraph (i);
 - (iii) an option to acquire, by way of issue, an interest or right covered by subparagraph (i) or (ii);
 - (ba) any of the following in relation to a managed investment scheme that is not a registered scheme, other than a scheme (whether or not operated in this jurisdiction) in relation to which none of paragraphs 601ED (1) (a), (b) and (c) are satisfied:
 - (i) an interest in the scheme;
 - (ii) a legal or equitable right or interest in an interest covered by subparagraph (i);
 - (iii) an option to acquire, by way of issue, an interest or right covered by subparagraph (i) or (ii).