



Corporations (360 Treasury Systems AG) Exemption Notice 2012

Corporations Act 2001

I, WILLIAM RICHARD SHORTEN, Minister for Financial Services & Superannuation and Minister for Employment & Workplace Relations, make this exemption under section 791C of the *Corporations Act 2001* (the *Act*).

Dated 14. 2. 2013

A handwritten signature in blue ink, which appears to read 'WR Shorten', is written over the signature line.

Minister for Financial Services & Superannuation and Minister for Employment & Workplace Relations

Name of exemption

1. This exemption is the *Corporations (360 Treasury Systems AG) Exemption Notice 2012*.

Commencement

2. This exemption commences on the day it is published in the *Gazette*.

Exemption

3. The exempt market operated by 360T in this jurisdiction is exempt from the operation of Part 7.2 of the Act.

Where this exemption applies

4. This exemption applies where all of the following matters in this paragraph 4 are satisfied.

Financial products

- (a) Any dealing in a financial product on the exempt market is limited to a dealing in an eligible financial product.

Trading on the market: market operator

- (b) 360T does not deal in financial products on the exempt market:
 - (i) on its own behalf; or
 - (ii) on behalf of a person who is not a professional investor.

Trading on the market: participant

- (c) 360T ensures that a person carrying on business in this jurisdiction does not directly participate in the exempt market unless the person:
 - (i) is a professional investor dealing in a financial product on its own behalf; or
 - (ii) is a professional investor dealing in a financial product on behalf of a person who is a professional investor.

Clearing and settlement facility

- (d) Neither 360T nor an associate of 360T operates a clearing and settlement facility in relation to the exempt market.

Note: For the avoidance of doubt, paragraph (d) does not prohibit 360T or an associate from providing information about, or establishing procedures dealing with, the settlement of transactions effected through the exempt market.

Cooperation with ASIC

- (e) 360T has entered into a written arrangement with ASIC for cooperation with ASIC in relation to this exemption and the subject matter to which this exemption relates.

Provision of financial services

- (f) 360T is exempt from the requirement to hold an Australian financial services licence for financial services provided in this jurisdiction in connection with the operation of the exempt market.

Note: This exemption does not exempt 360T from the requirement to hold an Australian financial services licence.

Submission to Australian jurisdiction

- (g) 360T satisfies all of the following:
- (i) 360T holds a German Banking Licence granted by BaFin under section 32 of the German Banking Act and has provided ASIC with a copy of that licence;
 - (ii) 360T is registered under Division 2 of Part 5B.2 of the Act;
 - (iii) 360T has provided ASIC, to the satisfaction of ASIC, with a deed of 360T for the benefit of and enforceable by ASIC and the other persons referred to in subsection 659B(1) of the Act, which deed provides that:
 - (I) the deed is irrevocable except with the prior written consent of ASIC;
 - (II) 360T submits to the non-exclusive jurisdiction of the Australian courts in legal proceedings conducted by ASIC (including under section 50 of the ASIC Act) and, in relation to proceedings relating to a financial services law, by any

person referred to in subsection 659B(1) of the Act and whether brought in the name of ASIC or the Crown or otherwise;

- (III) 360T covenants to comply with any order of an Australian court in respect of any matter relating to the provision of specified kinds of financial services in this jurisdiction to wholesale clients;
- (IV) 360T covenants that, on written request of either BaFin or ASIC, it will give or vary written consent and take all other practicable steps to enable and assist BaFin to disclose to ASIC and ASIC to disclose to the BaFin any information or document that BaFin or ASIC has that relates to 360T.

Conditions

- 5. This exemption ceases to apply if 360T fails to take reasonable steps to comply with any of the matters set out in this paragraph 5.

Operation of the market

- (a) 360T, in all material respects, must operate the exempt market in the way set out in the application for exemption.

Conduct

- (b) 360T must do all things necessary to ensure that any financial services provided by 360T in connection with the operation of the exempt market are provided efficiently, honestly and fairly.

Resources

- (c) 360T must have available adequate resources (including financial, technological and human resources) to provide the financial services in connection with the operation of the exempt market and to carry out supervisory arrangements.

Managing conflicts of interest

- (d) 360T must have adequate arrangements in place for managing its conflicts of interest arising from operating the exempt market.

Reporting: adverse findings

- (e) If 360T becomes aware that 360T or a director or secretary of 360T is covered by one or more of the following matters, 360T must, within 7

days after becoming aware of the matter, give a written notice to ASIC advising of the matter:

- (i) the person is the subject of a declaration of contravention in relation to a provision of the Act;
- (ii) the person has been convicted of an offence under the Act;
- (iii) in the case of a director or secretary—the person has been disqualified from managing corporations under Part 2D.6 of the Act;
- (iv) the person has been banned or disqualified from providing financial services under Division 8 of Part 7.6 of the Act.

Reporting: disciplinary action against participant

- (f) If 360T takes disciplinary action against an Australian participant of the exempt market, 360T must, as soon as practicable, give a written notice to ASIC that includes the following details:
 - (i) the participant's name;
 - (ii) the reason for and nature of the action taken;
 - (iii) when the action was taken.

Reporting: suspected contraventions by participant

- (g) If 360T has reason to suspect that an Australian participant has committed, is committing, or is about to commit, a contravention of the Act or a significant contravention of the obligations imposed by 360T in relation to the exempt market, 360T must, as soon as practicable, give a written notice to ASIC that includes the following details:
 - (i) the participant's name; and
 - (ii) details of the contravention or impending contravention; and
 - (iii) 360T's reason for that belief.

Assistance to ASIC

- (h) If 360T receives a reasonable request from ASIC to give assistance (which may include giving access to any information, document or books

held by 360T) to ASIC, or to a person authorised by ASIC, in relation to the operation of the exempt market, 360T must provide that assistance.

Record-keeping

- (i) 360T must have adequate arrangements in place for the recording of order information and transactions effected through the exempt market.
- (j) 360T must keep for a period of at least 5 years the following records of order information and transactions effected through the exempt market:
 - (i) the date and time that the order was received;
 - (ii) the identity of the participant placing the order;
 - (iii) the name and quantity of the financial product to which the order applies;
 - (iv) the designation of the order as a buy or sell order;
 - (v) any limit or stop price prescribed by the order;
 - (vi) the date and time at which the order expires;
 - (vii) details of any modification or cancellation of the order;
 - (viii) the price, quantity, date and time of execution of the order; and
 - (ix) the identities of the counterparties to the transaction.

Annual report

- (k) 360T must, within three months after the end of its financial year, give ASIC an annual report that sets out:
 - (i) the extent to which 360T has complied with this exemption; and
 - (ii) the following information:
 - (A) a description of the activities that 360T undertook in the financial year in relation to the operation of the exempt market;
 - (B) if any material system outages occurred during the financial year that prevented Australian participants from participating in the exempt market:

- (I) the number of such outages; and
 - (II) the duration of each outage; and
 - (III) the cause of each outage; and
 - (IV) a description of the means by which each outage was resolved;
- (iii) the names and number of Australian participants who directly participated in the exempt market at any time throughout the financial year, identifying those Australian participants who, as at the last day of the financial year, were allowed to directly participate in the market;
 - (iv) details of the volume of trading on the exempt market by Australian participants throughout the financial year;
 - (v) the number and nature of significant complaints made to 360T by Australian participants who participated in the exempt market during the financial year, and the action taken by 360T in response to each complaint;
 - (vi) any specific regulatory issues in relation to the exempt market operated by 360T in this jurisdiction or a financial market operated by 360T outside this jurisdiction, that 360T encountered during the financial year and actions taken to resolve those issues;
 - (vii) details of any significant conflicts of interest identified by 360T in relation to its operation of the exempt market during the financial year, and how each conflict of interest was managed.

Audit report

- (l) If the Minister in writing requests 360T to obtain an audit report, prepared by either ASIC or another person or body that is a suitably qualified person, in relation to the annual report mentioned in paragraph (k) or on any information or statements accompanying the annual report, 360T must comply with the request.

Reporting: operating status of market

- 6. 360T must, within 7 days, notify ASIC in writing if it ceases to operate the exempt market in this jurisdiction.

Interpretation

7. In this exemption:

- (a) italicised headings do not form part of this exemption;
- (b) **360T** means 360 Treasury Systems AG, a company incorporated and existing under the laws of the Federal Republic of Germany.

application for exemption means the application dated 26 November 2012 (including any supplementary correspondence provided by 360T to ASIC before this exemption is made) for an exemption from the operation of Part 7.2 of the Act of the financial market operated by 360T.

Australian participant means a participant carrying on business in this jurisdiction.

BaFin means the Bundesanstalt für Finanzdienstleistungsaufsicht of Germany, the German Federal Financial Supervisory Authority.

eligible financial product means a financial product of the following kinds:

- (a) a financial product mentioned in paragraph 764A(1)(k) of the Act;
- (b) a foreign exchange derivative;
- (c) an interest rate derivative;
- (d) a deposit-taking facility made available by an ADI (within the meaning of the *Banking Act 1959*) in the course of its banking business (within the meaning of that Act), other than an RSA (retirement savings account) (within the meaning of the *Retirement Savings Account Act 1997*).

exempt market means the facility through which:

- (a) offers to acquire or dispose of eligible financial products are regularly made or accepted; or
- (b) offers or invitations are regularly made to acquire or dispose of eligible financial products that are intended to result or may reasonably be expected to result, directly or indirectly, in:
 - (i) the making of offers to acquire or dispose of eligible financial products; or

(ii) the acceptance of such offers.

financial services law has the meaning given by section 761A of the Act.

German Banking Act means the Gesetz über das Kreditwesen of Germany

participant has the meaning given by section 761A of the Act.

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