



## **Australian Market Licence (Asia Pacific Exchange Limited) Variation Notice 2013 (No. 1)**

*Corporations Act 2001*

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I, BERNIE RIPOLL, Parliamentary Secretary to the Treasurer, make this Variation under section 796A of the *Corporations Act 2001* (the Act).

Dated 22.4.2013

A handwritten signature in blue ink, appearing to read 'Bernie Ripoll', is written over a horizontal line.

Parliamentary Secretary to the Treasurer

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### **1. Name of variation**

This variation is the *Australian Market Licence (Asia Pacific Exchange Limited) Variation Notice 2013 (No. 1)*.

### **2. Commencement**

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

### **3. Variation**

The Schedule varies the Australian Market Licence (Asia Pacific Exchange Limited) 2004 (as varied by Australian Market Licence (Australia Pacific Exchange Limited) Variation Notice 2009 (No. 1) and Australian Market Licence (Asia Pacific Exchange Limited) Variation Notice 2010 (No. 1)).

## Schedule          Variation

### [1]    Section 3

*Insert four new definitions after "APX"*

**cash** means current assets valued at the amount of cash for which they can be expected to be exchanged within five business days.

**cash flows** are inflows and outflows of cash.

**cash flow positive** means the total cash inflows less the total cash outflows is greater than zero.

*Insert new definition after "Division 3 arrangements"*

**eligible financial provider** means an Australian ADI or an entity that is approved for the purposes of sections 13 and 14 by ASIC in writing and that is:

- (a) a foreign deposit-taking institution; or
- (b) an entity of undoubted financial substance.

*Insert three new definitions after "fidelity fund"*

**net tangible assets** or **NTA** has the same definition as in ASIC Pro Forma 209 Australian Financial Services Licence Conditions (**PF 209**) as reissued by ASIC in November 2012, and terms used in that definition also have the same definition as in PF 209.

**quarter** means a period of three months, ending on 31 March, 30 June, 30 September and 31 December, in each year during which the market operates.

**Service Provider** means any related entity appointed by APX to provide services for the administration of APX's affairs and finances.

*Substitute, Note 2*

*Note 2* A number of expressions used in this Licence are defined in section 761A of the Act, including **Australian financial services licence, licensed market, managed investment product, participant and security**.

### [2]    Section 10

*Omit the section*

### [3]    Sections 13 and 14

*Insert new sections after section 12*

### **13. Conditions which must be satisfied before APX operates the market**

- (1) APX must not operate the market unless all of the following are satisfied:
  - (a) the documents and information referred to in sections 13(2) to 13(6) are given to ASIC, dated not more than 30 days before being given to ASIC;
  - (b) ASIC has confirmed to APX in writing that the conditions set out in sections 13(2) to 13(6) are satisfied;
  - (c) 14 days have elapsed after the confirmation mentioned in paragraph 13(1)(b) was given.
- (2) APX must give to ASIC a written confirmation by a person approved by ASIC and engaged on terms and conditions acceptable to ASIC, including as to the scope of the person's work:
  - (a) of the adequacy of APX's governance framework for testing technology systems;
  - (b) verifying that prospective participants and data vendors, if any, have attested they are operationally ready for the commencement of the market;
  - (c) of the adequacy and results of APX's testing of its technology systems, including testing of all necessary external connections which APX needs to have in place to operate the market, according to the governance framework.
- (3) APX must give to ASIC, in writing:
  - (a) a projection of cash flows for each of the first 12 months of operation of the market for:
    - (i) APX; and
    - (ii) any Service Provider, to the extent that the cash flows of the Service Provider constitute payments in respect of the administration of APX's affairs and financesbased on the reasonable estimate of APX and any Service Provider of what is likely to happen over that period;
  - (b) the calculations and assumptions used for preparing the projections referred to in paragraph 13(3)(a), including a description of why the assumptions relied upon are the appropriate assumptions; and
  - (c) evidence that APX, and not its Service Provider, holds an amount of cash that is no less than the total of the first six monthly projected cash outflows provided under:
    - (i) paragraph 13(3)(a)(i) excluding cash outflows payable to any Service Provider in respect of the administration of APX's affairs and finances; and
    - (ii) paragraph 13(3)(a)(ii).

- (4) APX must give to ASIC written evidence that an eligible financial provider has given APX an enforceable and unqualified commitment to pay on demand from time to time to:
  - (a) APX and its Service Provider, an amount of cash that is sufficient to cover the total of the first six months projected cash outflows as calculated under paragraph 13(3)(a)(i) and (ii); or
  - (b) creditors or to a trustee for creditors of:
    - (i) APX; and
    - (ii) any Service Provider

an amount for which APX or its Service Provider, to the extent that the cash flows of the Service Provider constitute payments in respect of the administration of APX's affairs and finances, is liable to those creditors at the time of the demand, not exceeding the amount referred to in paragraph 13(3)(c).
- (5) APX must confirm to ASIC in writing that it has employed or engaged all necessary people in all positions so that it has sufficient human resources to operate the market properly in accordance with its obligations under paragraph 792A(d) of the Act.
- (6) APX must give to ASIC written evidence of the source of funds for the Division 3 arrangements for the purposes of section 8.

#### **14. Financial resources**

- (1) From the date that APX commences to operate the market until APX's monthly cash flow, or the aggregated monthly cash flows of APX and any Service Provider in respect of the administration of APX's affairs and finances, is cash flow positive for each of the six consecutive months, APX:
  - (a) must not transfer any funds to a related body corporate (other than to its Service Provider under any agreement for the provision of services for the administration of APX's affairs and finances or as part of trading fee rebates that may be due through trading on the market);
  - (b) must give ASIC for each quarter, and no later than 28 days after the end of each quarter, a report which contains:
    - (i) a statement of cash flows of:
      - A. APX;
      - B. any Service Provider, and
      - C. any Service Provider, to the extent that the cash flows are in respect of the administration of APX's affairs and finances.
    - (ii) a statement of financial position of:
      - A. APX; and
      - B. any Service Provider;
    - (iii) a projection of cash flows for the next 12 months of:

- A. APX; and
  - B. any Service Provider, to the extent that the cash flows of the Service Provider constitute payments in respect of the administration of APX's affairs and finances  
for each month within the period, based on APX and its Service Provider's reasonable estimate of what is likely to happen over that period; and
- (iv) a statement of the directors regarding whether APX continues to satisfy the requirements of paragraph 14(1)(c);
- (c) must have at all times:
- (i) based on the most recent projected cash flows provided to ASIC under paragraph 14(1)(b)(iii), an amount of cash no less than the total of the next six monthly projected cash outflows under:
    - A. paragraphs 14(1)(b)(iii)(A) excluding cash outflows payable to any Service Provider in respect of the administration of APX's affairs and finances; and
    - B. paragraph 14(1)(b)(iii)(B);
  - (ii) net tangible assets of an amount that is no less than the projected total cash outflows under paragraph 14(1)(c)(i);
  - (iii) an enforceable and unqualified commitment given to APX by an eligible financial provider to pay on demand from time to time to:
    - A. APX, an amount of cash that is sufficient to cover the total projected cash outflows of APX and its Service Provider as calculated under paragraph 14(1)(c)(i); or
    - B. creditors or to a trustee for creditors of:
      - (i) APX; and
      - (ii) any Service Provider

an amount for which APX or its Service Provider, to the extent that the cash flows of the Service Provider constitute payments in respect of the administration of APX's affairs and finances, is liable to those creditors at the time of the demand, not exceeding the amount referred to in paragraph 14(1)(c)(i);
- (d) as soon as practicable, must give written notice to ASIC if APX or its Service Provider:
- (i) considers its financial resources are insufficient to meet the requirements of paragraph 14(1)(c); or
  - (ii) funds are called upon for the commitment described in section 13(4) or paragraph 14(1)(c)(iii),  
including a description of the circumstances that led to APX or its Service Provider having to give notice to ASIC under this paragraph and the measures, if any, that APX or its Service Provider is taking to obtain the financial resources necessary to meet the requirements of paragraph 14(1)(c); and

- (e) must advise ASIC in writing within 10 business days of the commencement or cessation as a Service Provider of APX of:
- (i) the Service Provider's name and Australian Company Number;  
and
  - (ii) the date of appointment or cessation as the Service Provider; and
  - (iii) provide a copy of any agreement between APX and the Service Provider.