



Corporations (BGC Brokers LP) Exemption Notice 2010

Corporations Act 2001

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

Dated 9-12-10

Parliamentary Secretary to the Treasurer

1. Name of Notice

This Notice is the *Corporations (BGC Brokers LP) Exemption Notice 2010*.

2. Commencement

This Notice commences on the day it is notified in the *Gazette*.

3. Definitions

In this Notice:

Act means the *Corporations Act 2001*.

Application means the application for an exemption from the operation of Part 7.2 of the Act, submitted to ASIC by BGCB, dated 12 July 2010, and subsequent correspondence prior to the issuing of this notice and relating to the application.

ASIC means the Australian Securities and Investments Commission.

Australian participant means a person in Australia who is a participant.

BGCB means BGC Brokers LP, a limited partnership formed under the law of the United Kingdom.

Class Order [CO 03/1099] means Class Order [03/1099], titled 'UK FSA regulated financial service providers' as in force from time to time.

clearing and settlement facility has the same meaning as in Chapter 7 of the Act.

derivative has the same meaning as in Chapter 7 of the Act.

financial year means BGCB's financial year.

Market means the financial market for credit derivatives, foreign exchange contracts that are foreign exchange options and interest rate derivatives that is operated by BGCB.

participant has the same meaning as in Chapter 7 of the Act.

professional investor has the same meaning as in section 9 of the Act.

UK FSA means the Financial Services Authority of the United Kingdom.

4. Exemption

For section 791C of the Act, and subject to the conditions mentioned in sections 5 to 17 of this Notice, the Market is exempt from the operation of Part 7.2 of the Act.

5. Operation of the Market

- (1) BGCB must operate the Market in all material ways as set out in the Application.
- (2) BGCB, or an associate of BGCB:
 - (a) must not operate a clearing and settlement facility for the Market; and
 - (b) may provide clearing and settlement arrangements for the Market only by providing information or by establishing procedures for the settlement of transactions effected through the Market.

6. Licensing of BGCB

BGCB must, at all times, comply with Class Order [CO 03/1099].

7. Participants who may trade on the Market

- (1) BGCB must not admit an Australian participant to the Market, or allow an Australian participant to enter into a trade on the Market, unless the Australian participant is a professional investor who is trading on its own behalf or on behalf of another professional investor.
- (2) BGCB must not trade on the Market on its own behalf or on behalf of another professional investor.

8. Financial products that may be traded on the Market

Only credit derivatives, foreign exchange contracts that are foreign exchange options and interest rate derivatives are permitted to be traded on the Market.

9. Arrangements to manage conflicts of interest

- (1) BGCB must establish and maintain arrangements to manage any conflicts of interest about activities undertaken by BGCB in the operation of the Market.
- (2) The arrangements must be to the satisfaction of ASIC.

10. Arrangements to record order information and transactions

- (1) BGCB must ensure that satisfactory arrangements are made for recording order information and transactions effected through the Market.
- (2) To comply with the condition set forth in subsection (1), the records must be kept in sufficient detail to show particulars of:
 - (a) the date and time that the order was received;
 - (b) the identity of the participant placing the order;
 - (c) the name and quantity of the financial product to which the order applies;
 - (d) the designation of the order as a buy or sell order;
 - (e) any limit or stop price prescribed by the order;
 - (f) the date and time at which the order expires;
 - (g) details of any modification or cancellation of the order;
 - (h) the price, quantity, date and time of execution of the order; and

- (i) the identities of the counterparties to the transaction.
- (3) The records must be kept and be available to ASIC for at least 5 years.
- 11. Annual report**
- (1) Within three months of the end of each financial year, BGCB must give a report to ASIC that sets out the extent to which BGCB has complied with the conditions in this Notice during that financial year.
- (2) The report must include the following information:
- (a) a description of the activities that BGCB has undertaken in the financial year in relation to the operation of the Market;
 - (b) if any material system outages occurred during the financial year that prevented Australian participants from using the Market:
 - (i) the number of such outages;
 - (ii) the duration of each outage;
 - (iii) the cause of each outage; and
 - (iv) a description of the means by which each outage was resolved.
 - (c) the names and number of Australian participants that were authorised to access the Market throughout the reporting period, identifying those still authorised to access the Market on the last day of the financial year;
 - (d) details of the volume of trading on the Market by Australian participants throughout the financial year;
 - (e) the number and nature of significant complaints made to BGCB by Australian participants who used the Market during the financial year, and the action taken by BGCB in response to each complaint;
 - (f) any specific regulatory issues that BGCB encountered during the financial year and actions taken to resolve those issues (whether inside or outside Australia); and
 - (g) details of any significant conflict of interest identified by BGCB in relation to its operation of the Market during the financial year, and how each conflict of interest was resolved.

12. Minister may require BGCB to submit to an audit

- (1) The Minister may, by written notice, require BGCB to obtain an audit report in relation to:
- (a) the annual report mentioned in section 11; and
 - (b) any information or statements accompanying the annual report.
- (2) The Minister may nominate either of the following to undertake the audit:
- (a) ASIC; or
 - (b) another person or body that is suitably qualified.

13. Reporting of certain events involving an Australian participant

- (1) If BGCB takes disciplinary action against an Australian participant of the Market, BGCB must, as soon as practicable, advise ASIC in writing of:
- (a) the participant's name; and
 - (b) the reason for and nature of the action taken; and
 - (c) when the action was taken.
- (2) If BGCB 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 their obligations imposed by BGCB in relation to the Market, BGCB must, as soon as practicable, advise ASIC in writing of:
- (a) the Australian participant's name; and
 - (b) details of the contravention or impending contravention; and
 - (c) BGCB's reason for that belief.

14. Reporting of certain events involving BGCB or a director or secretary of BGCB

If BGCB becomes aware that BGCB, or a director or secretary of BGCB:

- (a) is the subject of a declaration of contravention in relation to a provision of the Act; or

- (b) has been convicted of an offence under the Act; or
- (c) has been disqualified from managing a corporation; or
- (d) has been banned from providing financial services;

BGCB must advise ASIC of the matter, in writing, within seven days after BGCB becomes aware of the matter.

15. Notice if BGCB ceases to operate the Market

BGCB must, within seven days, advise ASIC in writing if it ceases to operate the Market in Australia.

16. Requirement to assist ASIC

If BGCB receives a reasonable request from ASIC to give assistance to ASIC, or to a person authorised by ASIC, about the performance of ASIC's functions in relation to the operation of the Market, BGCB must:

- (a) provide that assistance; and
- (b) give ASIC access to any information, document or books held by BGCB.

17. Requirement to enter into written arrangement with ASIC

BGCB must enter into a written arrangement with ASIC for cooperation with ASIC in matters relating to this Notice.