



Australian Market Licence (Chi-X Australia Pty Ltd) 2011

Corporations Act 2001

I, BILL SHORTEN, Minister for Financial Services and Superannuation, grant this Licence under subsection 795B(1) of the Corporations Act 2001.

Dated4/05/.....2011

Minister for Financial Services and Superannuation

1. Name of Licence

This Licence is the *Australian Market Licence (Chi-X Australia Pty Ltd) 2011*.

2. Commencement

This Licence commences when it is granted.

3. Definitions

In this Licence:

Act means the *Corporations Act 2001*.

ASIC means the Australian Securities and Investments Commission.

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

cash flow means Chi-X's own cash flow.

cash flow positive means cash flow greater than zero.

Chi-X means Chi-X Australia Pty Ltd (ACN 129 584 667).

CS facility licensee has the meaning given by section 761A of the Act.

Division 3 arrangements has the meaning given by section 880B of the Act.

eligible financial provider means an Australian ADI or an entity that is approved for the purposes of sections 8 and 9 by ASIC in writing and that is:

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

fidelity fund has the meaning given by section 880B of the Act.

market means the financial market Chi-X is authorised to operate under this Licence.

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 May 2010, and terms used in that definition also have the same definition as in PF 209.

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

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.

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

4. Grant of Licence

This Licence is granted to Chi-X to operate the market through which participants may enter into trades in the financial products mentioned in section 5.

5. Classes of financial products

The classes of financial products that can be dealt with on the market are:

- (a) securities; and
- (b) financial products mentioned in paragraph 764A(1)(b) of the Act; and
- (c) financial products mentioned in paragraph 764A(1)(ba) of the Act that relate to a managed investment scheme that is not required to be registered under Chapter 5C of the Act.

6. Clearing and settlement arrangements

Chi-X must have clearing and settlement arrangements for transactions effected through the market with:

- (a) ASX Clear Pty Limited (ACN 001 314 503) and ASX Settlement Pty Limited (ACN 008 504 532); or
- (b) any other CS facility licensee approved for the purpose by the Minister.

7. Compensation arrangements

- (1) The minimum amount of cover required for the Division 3 arrangements is \$10,200,000.
- (2) The source of funds for the Division 3 arrangements must include a fidelity fund of a minimum amount of \$200,000 and may include one or more of the following:
 - (a) insurance arrangements;
 - (b) an irrevocable letter of credit.

8. Conditions which must be satisfied before Chi-X begins to operate the market

- (1) Chi-X must not commence operating the market unless all of the following are satisfied:
 - (a) the documents and information referred to in subsections (2) to (6) are given to ASIC, dated not more than 30 days before being given to ASIC;
 - (b) ASIC has confirmed to Chi-X in writing that the conditions set out in subsections (2) to (6) are satisfied;
 - (c) 14 days have elapsed after the confirmation mentioned in paragraph (b) was given.
- (2) Chi-X 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 Chi-X's governance framework for testing technology systems;
 - (b) verifying that prospective participants and data vendors have attested they are operationally ready for the commencement of the market;
 - (c) of the adequacy and results of Chi-X's testing of its technology systems, including testing of all necessary external connections which Chi-X needs to have in place to operate the market, according to the governance framework.
- (3) Chi-X must give to ASIC, in writing:
 - (a) a projection of Chi-X's cash flows for the first 12 months of operation of the market, including the projected cash outflow for each month within the period, based on Chi-X's reasonable estimate of what is likely to happen over that period; and
 - (b) the calculations and assumptions used for preparing the projection referred to in paragraph (a), including a description of why the assumptions relied upon are the appropriate assumptions; and

- (c) evidence that Chi-X, based on the projected cash flows under paragraph (a), holds an amount of cash that is no less than the projected total cash outflow for the first six months of operation of the market.
- (4) Chi-X must give to ASIC written evidence that an eligible financial provider has given Chi-X an enforceable and unqualified commitment to pay on demand from time to time to:
 - (a) Chi-X, an amount of cash that is sufficient, based on the projected cash flows under paragraph (3)(a), to cover Chi-X's total projected cash outflows for the first six months of operation of the market; or
 - (b) Chi-X's creditors or to a trustee for Chi-X's creditors, an amount for which Chi-X is liable to those creditors at the time of the demand, not exceeding the amount referred to in paragraph (4)(a).
- (5) Chi-X must confirm to ASIC in writing that it has employed or engaged all necessary people in all of the positions described in its application under subsection 795A(1) of the Act, and that as a result, it has sufficient human resources to operate the market properly in accordance with its obligations under paragraph 792A(d) of the Act.
- (6) Chi-X must give to ASIC written evidence of the source of funds for the Division 3 arrangements for the purposes of section 7.

9. Financial resources

From at least the date that Chi-X commences to operate the market until Chi-X has been cash-flow positive for six consecutive months, Chi-X:

- (a) must not transfer any funds to a related body corporate (other than as part of trading fee rebates that may be due through trading on the market);
- (b) must give ASIC on a quarterly basis, no later than 28 days after the end of each quarter, a report which contains:
 - (i) a statement of cash flows and a statement of financial position for the quarter;
 - (ii) a projection of cash flows for the next 12 months, including the projected cash outflow for each month within the period, based on Chi-X's reasonable estimate of what is likely to happen over that period;
 - (iii) a statement of the directors regarding whether Chi-X continues to satisfy the requirements of paragraph (c);
- (c) must have at all times:

- (i) based on the projected cash flows under subparagraph (b)(ii), an amount of cash no less than the projected total cash outflow for the next six months;
- (ii) based on the projected cash flows under subparagraph (b)(ii), net tangible assets of an amount that is no less than the projected total cash outflow for the next six months;
- (iii) an enforceable and unqualified commitment given to Chi-X by an eligible financial provider to pay on demand from time to time to:
 - A. Chi-X, an amount of cash that is sufficient, based on the most recent projected cash flows under subparagraph (b)(ii), to cover Chi-X's total projected cash outflows for the next six months of operation of the market; or
 - B. Chi-X's creditors or to a trustee for Chi-X's creditors, an amount for which Chi-X is liable to those creditors at the time of the demand, not exceeding the amount referred to in sub-subparagraph (c)(iii)(A); and
- (d) as soon as practicable, must give written notice to ASIC if:
 - (i) it considers its financial resources are insufficient to meet the requirements of paragraph (c);
 - (ii) funds are called upon the commitment described in subsection 8(4) or subparagraph (b)(iii);

including a description of the circumstances that led to Chi-X having to give notice to ASIC under this paragraph and the measures if any that Chi-X is taking to obtain the financial resources necessary to meet the requirements of paragraph (c).