



# Corporations Act (GFI Brokers Limited) Exemption Notice 2007

## *Corporations Act 2001*

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

Dated 23<sup>rd</sup> NOVEMBER 2007

Parliamentary Secretary to the Treasurer

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**1 Name of Notice**

This Notice is the *Corporations Act (GFI Brokers Limited) Exemption Notice 2007*.

**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*.

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

*Class Order [CO 03/1099]* means Class Order [03/1099], titled 'UK FSA regulated financial service providers':

(a) issued by ASIC on 22 December 2003; and

- (b) notified in the *Gazette* on 23 December 2003; and
- (c) in force on the date of the gazettal of this exemption.

**credit default swap** has the meaning as an agreed market standard term as set out in the Australian Financial Markets Association's 'OTC Financial Product Conventions for Credit Derivatives'.

*Note* The Australian Financial Markets Association is also known as AFMA.

**derivative** has the meaning given by section 761A of the Act.

**financial year** means the financial year ending 31 December.

**foreign exchange contract** has the meaning given by section 761A of the Act.

**foreign participant** means a participant who is not an Australian participant.

**GFI** means GFI Brokers Limited.

**GFI Market** means the financial market operated by GFI, which consists of CreditMatch and ForexMatch trading platforms, as described in the application for the exemption set out in this Notice.

**ISDA Master Agreement** means a master agreement issued by the International Swaps and Derivatives Association, Inc.

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

**Part IV Permission** means a permission issued by the UK FSA under Part IV of the Financial Services and Markets Act 2000 of the United Kingdom.

**UK FSA** means the Financial Services Authority in the United Kingdom.

#### 4 Exemption

For section 791C of the Act, and subject to the conditions mentioned in sections 5 to 14 of this Notice, the GFI market is exempt from the operation of Part 7.2 of the Act.

#### 5 Operation of GFI Market

- (1) GFI must operate the GFI Market in all essential details in the way set out in:
  - (a) the application for this exemption by GFI dated 20 April 2007; and
  - (b) letters from GFI dated 5 June 2007 and 16 July 2007.
- (2) GFI must, at all times, hold a current Part IV Permission that covers the provision of the financial services involved in the operation of the GFI Market.
- (3) GFI must, at all times, comply with Class Order [CO 03/1099].
- (4) GFI, or an associate of GFI, must not operate a clearing and settlement facility for the GFI Market.

**6 Financial products that may be traded on the GFI Market**

GFI must not trade in a financial product on the GFI Market other than the following:

- (a) foreign exchange contracts that are foreign exchange options entered into under the ISDA Master Agreement or another Master Agreement commonly used by counterparties for that purpose;
- (b) credit default swaps entered into under the ISDA Master Agreement or another Master Agreement commonly used by counterparties for that purpose.

**7 Participants who may trade on the GFI Market**

- (1) GFI must not admit an Australian participant to, or allow an Australian participant to enter into a trade on, the GFI Market unless the Australian participant is a professional investor who is trading:
  - (a) on its own behalf; or
  - (b) on behalf of another professional investor.
- (2) GFI must not admit a foreign participant to, or allow a foreign participant to enter into a trade on, the GFI Market unless the foreign participant is a professional or institutional investor in the jurisdiction in which the participant trades, and trading:
  - (a) on its own behalf; or
  - (b) on behalf of another professional investor.

**8 Conflict of interest**

GFI must establish and maintain adequate arrangements, with which ASIC must be satisfied, for the management of any conflict of interest that may arise in relation to activities undertaken by GFI in the operation of the GFI Market.

**9 Reporting of certain events involving an Australian participant**

- (1) If GFI takes disciplinary action against an Australian participant of the GFI Market, GFI 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.
- (2) If GFI has information that would cause a person to believe or suspect, on reasonable grounds, that an Australian participant has committed, is committing, or is about to commit, a significant contravention of the Act or the GFI Market's operating rules, GFI 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) GFI's reason for that belief or suspicion.

**10 Reporting of certain events involving GFI or a director or secretary of GFI**

- (1) If GFI becomes aware that GFI, or a director or secretary of GFI:
  - (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 or disqualified from providing financial services;GFI must advise ASIC of the matter, in writing, within 14 days after GFI becomes aware of the matter.
- (2) If GFI ceases to operate any of the platforms of the GFI Market in Australia, GFI must notify ASIC of that matter, in writing, within 7 days.

**11 Annual report**

- (1) Within three months of the end of GFI's financial year, GFI must submit a report to ASIC that sets out the extent to which GFI has complied with the conditions of the exemption during the financial year.
- (2) The report must include the following information:
  - (a) a description of the activities that GFI has undertaken in the financial year in relation to the operation of the GFI Market;
  - (b) the number, duration, cause and resolution of material system outages that prevented Australian participants from using the GFI Market;
  - (c) the names of Australian participants authorised to access the GFI Market at the beginning and end of the financial year respectively;
  - (d) the number of Australian participants authorised to access the GFI Market at the beginning and end of the financial year respectively;
  - (e) details of the volume of trading on the GFI Market by Australian participants;
  - (f) the number and nature of significant complaints made to GFI by Australian participants of the GFI Market, and the action taken by GFI in response to each complaint;
  - (g) details of any specific regulatory issues that GFI encountered during the year (including any change in regulatory status in its home jurisdiction), and the action taken to resolve the issue (inside or outside Australia);
  - (h) details of any significant conflict of interest identified by GFI in relation to its operation of the GFI Market, and how it was resolved.

**12 Minister may require GFI to submit to an audit**

- (1) The Minister may, by notice in writing, require GFI to obtain an audit report on the annual report mentioned in section 11 and on any information or statement accompanying the report.

- (2) The Minister may nominate:
  - (a) ASIC; or
  - (b) another person or body that is suitably qualified to undertake audits; to prepare the audit report.

**13 GFI to give assistance to ASIC**

- (1) GFI must, if it receives a reasonable request to do so, give assistance to:
  - (a) ASIC; or
  - (b) a person authorised by ASIC;in relation to the performance of ASIC's functions regarding the operation of the GFI Market.
- (2) The assistance may include giving access to information, documents or books held by, or relating to, GFI.

**14 GFI must enter into a written agreement with ASIC**

GFI must enter into a written arrangement with ASIC for cooperation with ASIC in matters to which this Notice relates.