



Corporations (Creditex Brokerage LLP) Exemption Notice 2010

Corporations Act 2001

I, CHRIS BOWEN, Minister for Financial Services, Superannuation and Corporate Law, make this Notice under section 791C of the *Corporations Act 2001*.

Dated 22 February 2010

Minister for Financial Services, Superannuation and Corporate Law

1 Name of Notice

This Notice is the *Corporations (Creditex Brokerage LLP) Exemption Notice 2010*.

2 Commencement

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

3 Exemption

For section 791C of the Act, and subject to the conditions mentioned in sections 4 to 16 of this Notice, the Market is exempt from the operation of Part 7.2 of the Act.

4 Operation of the Market

- (1) Creditex Brokerage LLP must operate the Market in all essential details in the way set out in the Application.
- (2) Creditex Brokerage LLP must at all times comply with Class Order [CO 03/1099].

5 Participants who may trade on the Market

- (1) Creditex Brokerage must not admit an Australian participant to, or allow an Australian participant to enter into a trade on, the Market unless the Australian participant is a professional investor that is trading:
 - (a) on its own behalf; or
 - (b) on behalf of another professional investor.
- (2) Creditex Brokerage LLP must not trade on the Market on its own behalf or on behalf of another investor.
- (3) Creditex Brokerage LLP or an associate of Creditex Brokerage LLP:
 - (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 and by establishing procedures for the settlement of transactions effected through the Market.

6 Financial products permitted to be traded on the Market

Creditex Brokerage LLP may facilitate trading on the Market in:

- (a) derivatives of credit or credit-related indices, typically entered into under the ISDA Master Agreement or another master agreement commonly used by counterparties for this purpose; and
- (b) bonds.

7 Arrangements to manage conflicts of interest

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

8 Annual report

Within 3 months of the end of its financial year, Creditex Brokerage LLP must give an annual report to ASIC that sets out information about the extent to which Creditex Brokerage LLP complied with the conditions of this Notice during the financial year, including the following:

- (a) a description of the activities that Creditex Brokerage LLP has undertaken during the financial year for 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; 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;
- (c) the names and number of Australian participants authorised to access the Market on the first and last days 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 Creditex Brokerage LLP by Australian participants who used the Market during the financial year, and the action taken by Creditex Brokerage LLP in response to each complaint;
- (f) any specific regulatory issues that Creditex Brokerage LLP encountered during the financial year, and the actions taken to resolve each of those issues (whether inside or outside Australia);
- (g) details of any significant conflicts of interest identified by Creditex Brokerage LLP in relation to its operation of the Market during the financial year, and how each conflict was resolved.

9 Reporting credit event auctions

- (1) If Creditex Brokerage LLP conducts a CEA with Australian participants or for a credit derivative that references an Australian entity, it must submit to ASIC within 2 business days of the auction a report about the CEA.
- (2) The report must identify:
 - (a) the credit event that gave rise to the CEA, including whether ISDA was involved in the confirmation of the credit event; and
 - (b) the participants in the CEA, including holders of relevant credit derivatives that may not previously have been Market participants; and
 - (c) the outcomes of the CEA, including the pricing of relevant bonds and the volumes of bonds and credit derivatives traded during the CEA; and
 - (d) any non-trivial complaints received in relation to the operation of the CEA.

10 Notice of certain events involving Australian participant

- (1) If Creditex Brokerage LLP takes disciplinary action against an Australian participant in the Market, Creditex Brokerage LLP must, as soon as practicable, advise ASIC in writing of:
 - (a) the Australian participant's name; and
 - (b) the reason for and nature of the action taken; and
 - (c) when the action was taken.

- (2) If Creditex Brokerage LLP has reason to suspect that an Australian participant has committed, is committing, or is about to commit, a significant contravention of the Act, Creditex Brokerage LLP 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) Creditex Brokerage LLP's reason for that suspicion.

11 Reporting certain events involving Creditex Brokerage LLP, its directors or secretary

If Creditex Brokerage LLP becomes aware that Creditex Brokerage LLP, or a director or secretary of Creditex Brokerage LLP:

- (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;

Creditex Brokerage LLP must advise ASIC of the matter, in writing, within 7 days after Creditex Brokerage LLP becomes aware of the matter.

12 Transaction recording

- (1) Creditex Brokerage LLP must ensure that satisfactory arrangements are made for recording order information and transactions effected on the Market.
- (2) To comply with the condition 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; and
 - (b) the identity of the participant placing the order; and
 - (c) the name and quantity of the financial product to which the order applies; and
 - (d) the designation of the order as a buy or sell order; and
 - (e) any limit or stop price prescribed by the order; and
 - (f) the date and time on which the order expires; and
 - (g) details of any modification or cancellation of the order; and
 - (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 readily accessible for a minimum period of 5 years.

13 Notice if Creditex Brokerage LLP cease to operate the Market

Creditex Brokerage LLP must, within 7 days, advise ASIC in writing if it ceases to operate the Market in Australia.

14 Minister may require Creditex Brokerage LLP to obtain an audit

- (1) The Minister may, by written notice, require Creditex Brokerage LLP to obtain an audit report about:
 - (a) the annual report mentioned in section 8; 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;
 - (b) another person or body that is suitably qualified to undertake audits.

15 Requirement to assist ASIC

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

- (a) provide that assistance; and
- (b) give ASIC access to any information, document or books held by Creditex Brokerage LLP and relating to the Market.

16 Requirement to enter written arrangement with ASIC

Creditex Brokerage LLP must enter into a written arrangement with ASIC for cooperation with ASIC in matters about this Notice.

17 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 Creditex Brokerage LLP, dated 23 December 2008.

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

bond means:

- (a) a debenture; and
- (b) a chose in action that includes an undertaking by a Government, a Government agency or a semi-Government agency to pay as a debt money deposited with or lent to the Government or agency.

CEA means credit event auction.

Class Order [CO 03/1099] means Class Order [CO 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.

ISDA means International Swaps and Derivatives Association, Inc.

ISDA Master Agreement means a master agreement issued by the ISDA.

Market means the financial market for credit derivatives and bonds operated by Creditex Brokerage LLP.

participant has the same meaning as in section 761A of the Act.

Note The following expressions used in this Notice are defined in the Act:

- ASIC (section 9)
- associate (sections 10 to 17)
- business day (section 9)
- clearing and settlement facility (section 768A)
- debenture (section 9)
- derivative (section 761D)
- financial product (section 763A)
- financial year (section 323D)
- professional investor (section 9).