



Corporations (Currenex) Exemption Notice 2011

Corporations Act 2001

I, BILL SHORTEN, Minister for Financial Services and Superannuation, issue this Notice under section 791C of the *Corporations Act 2001*.

Dated 31-3-2011

A handwritten signature in black ink, appearing to read 'W. R. Shorten', is written over the printed name of the Minister.

Minister for Financial Services and Superannuation

1. Name of Notice

This Notice is the *Corporations (Currenex) Exemption Notice 2011*.

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*.

Agent means a natural person resident in Australia or a company whose name and address were last notified to ASIC by Currenex for the purpose of this Notice.

Application means the application for an exemption from the operation of Part 7.2 of the Act, submitted to ASIC by Currenex, dated 23 August 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.

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

Currenex means, Currenex Inc, which is incorporated in the State of Delaware, United States of America.

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

financial year means Currenex's financial year.

Markets means the:

(a) financial market for:

- (i) financial products mentioned in paragraph 764A(1)(k) of the Act; and
- (ii) spot metals; and

(b) financial market for:

- (i) financial products mentioned in paragraph 764A(1)(k) of the Act; and
- (ii) spot metals;
- (iii) foreign exchange contracts that are foreign exchange forwards and foreign exchange swaps; and
- (iv) metals derivatives

that are operated by Currenex.

metals means any of the following metals: gold, silver, palladium or platinum.

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

professional investor has the meaning given by section 9 of the Act.

4. Exemption

For section 791C of the Act, and subject to the conditions mentioned in sections 5 to 21 of this Notice, the Markets are exempt from the operation of Part 7.2 of the Act.

5. Operation of the Markets

- (1) Currenex must operate the Markets in all material ways as set out in the Application.
- (2) Currenex, or an associate of Currenex:
 - (a) must not operate a clearing and settlement facility for the Markets; and

- (b) may provide arrangements for clearing and settlement for the Markets only by providing information and by establishing procedures for the settlement of transactions effected through the Markets.

6. Licensing of Currenex

Currenex must, at all times, comply with section 911A(2E) of the Act, as modified by regulation 7.6.02AG of the *Corporations Regulations 2001*.

7. Participants who may trade on the Market

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

8. Financial products that may be traded on the Market

Only the financial products mentioned in the definition of 'Markets' under section 3 of this Notice are permitted to be traded on the Markets.

9. Arrangements to manage conflicts of interest

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

10. Arrangements to record order information and transactions

- (1) Currenex must ensure that satisfactory arrangements are made for recording order information and transactions effected on the Markets.
- (2) To comply with the condition set 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 a sell order;
 - (e) any limit or stop price prescribed by the order;
 - (f) the date and time on 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, Currenex must give a report to ASIC that sets out the extent to which Currenex 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 Currenex has undertaken in the financial year for the operation of the Markets;
 - (b) if any material system outages occurred during the financial year that prevented Australian participants from using the Markets:
 - (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 Markets throughout the reporting period, identifying those still authorised to access the Markets on the last day of the financial year;
 - (d) details of the volume of trading on the Markets by Australian participants throughout the financial year;

- (e) the number and nature of significant complaints made to Currenex by Australian participants who used the Markets during the financial year, and the action taken by Currenex in response to each complaint;
- (f) any specific regulatory issues that Currenex 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 Currenex in relation to its operation of the Markets during the financial year, and how each conflict of interest was resolved.

12. Minister may require Currenex to submit to an audit

- (1) The Minister may, by written notice, require Currenex 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 Currenex takes any disciplinary action against an Australian participant of the Markets, Currenex must, as soon as practicable, advise ASIC in writing of:
 - (a) the participant's name;
 - (b) the reason for and nature of the action taken; and
 - (c) when the action was taken.
- (2) If Currenex 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 Currenex in relation to the Markets, Currenex 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) Currenex's reason for that belief.

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

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

- (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;

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

15. Notice if Currenex ceases to operate the Markets

Currenex must, within seven days, advise ASIC in writing if it ceases to operate either of the Markets in Australia.

16. Requirement to assist ASIC

If Currenex 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 Markets, Currenex must:

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

17. Requirement to enter into written arrangement with ASIC

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

18. Requirement to provide financial services efficiently, honestly and fairly

Currenex must do all things necessary to ensure that the financial services associated with the operation of the Markets are provided efficiently, honestly and fairly.

19. Adequate resources

Currenex must have available adequate resources (including financial, technological and human resources) to provide the financial services associated with the operation of the Markets and to carry out supervisory arrangements.

20. Requirement to submit to jurisdiction of Australian courts

Currenex must submit to the jurisdiction of an Australian court in an action brought by ASIC in relation to the Markets.

21. Local agent

Currenex must appoint and maintain an agent in Australia at all times, who is authorised to accept on Currenex's behalf, service of process from ASIC and, in relation to proceedings relating to financial services law, from any person referred to in section 659B(1) of the Act. In the event of the appointment of a new agent, Currenex must advise ASIC in writing as soon as practicable.