



Corporations (EBS Service Company Limited) 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

A handwritten signature in black ink, appearing to read 'Chris Bowen', is written over a horizontal line.

Minister for Financial Services, Superannuation and Corporate Law

1 Name of Notice

This Notice is the *Corporations (EBS Service Company Limited) Exemption Notice 2010*.

2 Commencement

This Notice commences the day after ASIC grants an Australian financial services licence to EBS under section 913B of the Act.

3 Definitions

In this Notice:

Act means the *Corporations Act 2001*.

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

EBS means EBS Service Company Limited.

EBS Market means the financial market that EBS operates in Australia.

foreign institutional investor means a person who is qualified and, if required, registered or licensed as a corporate, institutional or professional investor for the regulatory requirements of the jurisdiction in which it is located.

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

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

precious or base metals means any of the metals aluminium, copper, gold, iridium, lead, nickel, osmium, palladium, platinum, rhodium, ruthenium, silver, tin or zinc.

Note Several others words and expressions used in this Notice have the same meaning given in the Act. For example:

- ASIC (section 9)
- associate (sections 10 to 17)
- Australian financial services licence (section 761A)
- clearing and settlement facility (section 768A)
- declaration of contravention (section 1317E)
- derivative (section 761D)
- financial product (section 763A)
- financial service (section 766A)
- financial year (section 323D)
- professional investor (section 9).

4 Exemption

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

5 Operation of EBS Market

- (1) EBS must operate the EBS Market in the way set out in:
 - (a) its application to ASIC for an Australian market licence, dated 7 June 2004; and
 - (b) its application to ASIC for variation of its Australian market licence, dated 16 November 2006; and
 - (c) its application to ASIC for an exemption from the operation of Part 7.2 of the Act, dated 18 December 2007; and
 - (d) any additional documents that it provided to ASIC in support of the application for an exemption from the operation of Part 7.2.
- (2) Following the execution of a transaction through the EBS Market, EBS must notify each participant that is a party to the transaction of the identity of the other party.
- (3) EBS must not:
 - (a) operate a clearing and settlement facility for the EBS Market; or

- (b) engage any other person to operate a clearing and settlement facility for the EBS Market.

6 Licensing of EBS

EBS must hold an Australian financial services licence for the provision of the financial services involved in the operation of the EBS Market.

7 Participants who may trade on EBS Market

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

8 Financial products traded on EBS Market

EBS may facilitate trading in a financial product on the EBS Market only if the financial product is:

- (a) a financial product mentioned in paragraph 764A (1) (k) of the Act; or
- (b) a derivative for the exchange of one currency for another; or
- (c) a derivative for the exchange of precious or base metals for currency.

9 Arrangements to manage conflicts of interest

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

10 Annual report

- (1) Within 3 months of the end of each financial year, EBS must give an annual report to ASIC that sets out information about EBS's compliance with the conditions of this Notice during the financial year.
- (2) The report must include the following information:
 - (a) a description of the activities in relation to the operation of the EBS Market that EBS undertook during the financial year;

Section 11

- (b) if any material system outages occurred during the financial year that prevented Australian participants from using the EBS 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 number of Australian participants authorised to access the EBS Market on the first and last days of the financial year;
- (d) the names of the Australian participants authorised to access the EBS Market on the first and last days of the financial year;
- (e) details of the volume of trading on the EBS Market by Australian participants during the financial year, including:
 - (i) the volume of trading of individual financial products by Australian participants;
 - (ii) the proportion of worldwide trading volume on the EBS Market that was conducted by Australian participants;
 - (iii) the proportion of the worldwide trading volume for individual financial products that was conducted by Australian participants;
- (f) the number and nature of significant complaints made to EBS by Australian participants who used the EBS Market during the financial year, and the action taken by EBS in response to each complaint;
- (g) any specific regulatory issues that EBS encountered during the financial year, and the actions taken to resolve each of those issues (whether inside or outside Australia);
- (h) details of any significant conflicts of interest identified by EBS in relation to its operation of the EBS Market during the financial year, and how each conflict of interest was resolved.

11 Minister may require EBS to obtain audit about annual report

- (1) The Minister may, by written notice, require EBS to obtain an audit report about:
 - (a) the annual report mentioned in section 10; and
 - (b) information or statements accompanying the annual report.
- (2) The Minister may nominate either of the following to undertake the audit:
 - (a) ASIC;
 - (b) a specified person or body that is suitably qualified.

12 Notice of certain events involving Australian participant

- (1) If EBS takes disciplinary action against an Australian participant of the EBS Market, EBS must, as soon as practicable after the action is taken, advise ASIC in writing of:
 - (a) the participant's name; and

- (b) the reason for and the nature of the action taken; and
 - (c) the date on which the action was taken.
- (2) If EBS has reason to suspect that an Australian participant has committed, is committing or is about to commit a significant contravention of the Act, EBS must, as soon as practicable, advise ASIC in writing of:
- (a) the participant's name; and
 - (b) details of the contravention or impending contravention; and
 - (c) EBS's reasons for that suspicion.

13 Notice of certain events involving EBS, its director or secretary

EBS must, within 7 days, advise ASIC in writing if EBS becomes aware that EBS or a director or secretary of EBS:

- (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.

14 Records of orders and transactions

- (1) EBS must make, or cause to be made, a record of each order placed for a financial product through the EBS Market and each transaction effected through the EBS Market.
- (2) The record must contain the following information:
- (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) a limit or stop price prescribed by the order;
 - (f) the date and time on which the order expires;
 - (g) details of a modification of the order;
 - (h) details of a cancellation of the order;
 - (i) if the order is executed — the price, quantity, date and time of the transaction;
 - (j) the identities of the counterparties to the transaction.
- (3) The record must be kept for 7 years after the time it was made.

15 Notice if EBS ceases to operate EBS Market

If EBS ceases to operate the EBS market in Australia, it must advise ASIC in writing within 7 days after it ceases to operate the market.

16 Requirement to assist ASIC

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

17 Requirement to enter written arrangement with ASIC

EBS must enter into a written arrangement with ASIC for cooperation with ASIC in matters mentioned in this Notice.