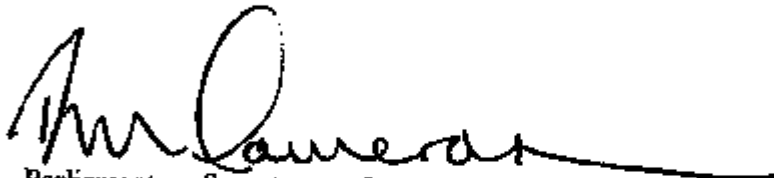




Australian Market Licence (Eurex Frankfurt AG) 2004

I, ROSS CAMERON, Parliamentary Secretary to the Treasurer, grant this Licence under subsection 795B (2) of the *Corporations Act 2001*.

Dated 10 March 2004



Parliamentary Secretary to the Treasurer

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1 **Name of Licence**

This Licence is the *Australian Market Licence (Eurex Frankfurt AG) 2004*.

2 **Commencement**

This Licence commences when it is granted.

3 **Definitions**

(1) In this Licence:

Act means the *Corporations Act 2001*.

Australia-based market means a financial market:

- (a) the principal place of operation of which is in Australia; and
- (b) that is operated by a person whose principal place of business is located in Australia.

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

EFAG means Eurex Frankfurt AG.

Eurex Deutschland means the body that has been formed as an exchange that EFAG is authorised to operate under a decision of the German Exchange Supervisory Authority dated 2 December 1998.

market means the financial market that EFAG is authorised to operate under this Licence.

participant means a person who is allowed to directly participate in the market under the rules of the market.

reporting period means a period of 6 months ending on 30 June or 31 December in each year, during which the market is operated in Australia.

rules of the market means any rules (however described) made by Eurex Deutschland that deal with:

- (a) the activities or conduct of the market; or
 - (b) the activities or conduct of persons in relation to the market;
- other than any such rules that deal with matters in respect of which licensed markets must have written procedures under regulations made under subsection 793A (2) of the Act.

Note At the commencement of this Licence, regulation 7.2.08 of the *Corporations Regulations 2001* prescribes matters for subsection 793A (2) of the Act.

- (2) A word or expression that is defined in the Act and used in this Licence has the same meaning in this Licence as it does in the Act.

4 Grant of licence

For subsection 795B (2) of the Act and subject to the conditions mentioned in sections 5 to 15, this Licence is granted to EFAG to operate the financial market:

- (a) that is a futures and options contracts exchange; and
- (b) that, at the commencement of this Licence, is known as Eurex Deutschland.

5 Class of financial products

The class of financial products that can be dealt with on the market is derivatives.

6 Clearing and settlement arrangements

Clearing and settlement arrangements for transactions effected through the market must be provided by Eurex Clearing AG or another clearing and settlement facility approved by the Minister.

7 Australian participants to be licensed

EFAG must ensure that Eurex Deutschland requires each Australian participant to hold an Australian financial services licence that permits trade in products of the same kind as those that can be dealt with on the market unless the participant is exempt under Australian law from the requirement to hold such a licence in relation to participation in the market.

8 Suspension or revocation of licence or trading permission

EFAG must ensure that Eurex Deutschland requires an Australian participant to notify Eurex Deutschland as soon as practicable if:

- (a) the Australian participant's permission to trade in products offered on the market; or
- (b) the Australian financial services licence under which that permission exists;

is suspended or revoked.

9 Disclosure to clients

EFAG must ensure that Eurex Deutschland requires an Australian participant to disclose to a client in Australia, before accepting the first order from the client to deal on the market, the differences between trading derivatives on the market and an Australia-based market, including the following:

- (a) that the principal places of business of EFAG and of Eurex Deutschland are located in Germany, and that the market is regulated primarily under the regulatory regime of Germany;

- (b) that the rights and remedies of, and compensation arrangements for, investors who acquire products offered on the market differ from the rights and remedies of investors who acquire products offered on an Australia-based market;
- (c) that Australian investors who acquire products offered on the market may be subject to the effects of changes in currency exchange rates.

10 Compliance and enforcement

EFAG must ensure that:

- (a) each participant in the market is legally obliged to comply with the rules of the market; and
- (b) there are adequate arrangements in place for monitoring the conduct of participants in or in relation to the market; and
- (c) there are adequate arrangements in place for enforcing the rules of the market.

11 Disqualified Individuals

EFAG must take all reasonable steps to ensure that a disqualified individual does not become, or remain, involved in Eurex Deutschland.

12 Notice of certain events

(1) If:

- (a) Eurex Deutschland takes disciplinary action against a participant in the market; and
- (b) either:
 - (i) the participant is in this jurisdiction; or
 - (ii) the activity giving rise to the disciplinary action may significantly affect:
 - (A) another participant in the market who is in this jurisdiction; or
 - (B) a client, of a participant in the market, whom EFAG believes to be in this jurisdiction;

EFAG must, as soon as practicable after the action is taken, give ASIC a written notice including the name of the participant, the action taken and the reason for the action.

(2) If:

- (a) Eurex Deutschland has reason to suspect that a person has committed, is committing or is about to commit a significant contravention of the Act or of the rules of the market; and
- (b) either:
 - (i) the person is a participant in the market who is in this jurisdiction; or

(ii) the contravention or impending contravention may significantly affect:

- (A) a participant in the market who is in this jurisdiction; or
- (B) a client, of a participant in the market, whom EFAG believes to be in this jurisdiction;

EFAG must, as soon as practicable after Eurex Deutschland forms the suspicion, give ASIC a written notice including the name of the person, details of the suspected contravention or impending contravention and the reasons for Eurex Deutschland's suspicion.

(3) If Eurex Deutschland becomes aware of:

- (a) a matter that EFAG considers has adversely affected, is adversely affecting, or may adversely affect the ability of a participant in the market who is a financial services licensee to meet the participant's obligations as a financial services licensee; or
- (b) a matter, concerning a participant in the market who is a financial services licensee, that is of a kind prescribed by regulations made for the purposes of paragraph 792B (3) (b) of the Act;

EFAG must give a written report to ASIC on the matter and send a copy of it to the participant.

Note At the commencement of this Licence, regulation 7.2.01 of the *Corporations Regulations 2001* prescribes matters for paragraph 792B (3) (b) of the Act.

(4) If a change is made to the rules of the market, EFAG must, as soon as practicable after the change is made, give ASIC a written notice that includes:

- (a) the text of the change; and
- (b) the date on which the change was made; and
- (c) an explanation of the purpose of the change.

13 Arrangements with Eurex Deutschland

EFAG must ensure that it has adequate arrangements with Eurex Deutschland:

- (a) for Eurex Deutschland to give EFAG assistance (including the provision of information) requested by EFAG for the purpose of giving assistance to ASIC or a person authorised by ASIC; and
- (b) for Eurex Deutschland to give EFAG access to the market requested by EFAG for the purpose of giving a person authorised by ASIC access to the market; and
- (c) to enable EFAG to comply with its obligations as a market licensee, including complying with:
 - (i) a direction given by the Minister under section 794A of the Act; or
 - (ii) a notice given by the Minister under section 794B of the Act; or
 - (iii) a direction given by ASIC under section 794D of the Act.

14 Reporting

EFAG must give the following information to ASIC in writing within 30 days after the end of each reporting period:

- (a) for each kind of contract that can be traded on the market — the total trade volume originating from Australian participants for the reporting period;
- (b) the proportion of worldwide trading volume on the market that was conducted by Australian participants for the reporting period;
- (c) the current name and business address in Australia for each Australian participant.

15 Submission to jurisdiction

- (1) EFAG must submit to the non-exclusive jurisdiction of the Australian courts in actions brought by ASIC.
- (2) If ASIC asks EFAG to do so, EFAG must obtain the submission of Eurex Deutschland to the non-exclusive jurisdiction of the Australian courts in actions brought by ASIC.