



**Corporations (i-Swap AUD NZD Pty Ltd) Exemption Notice 2012**

*Corporations Act 2001*

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I, WILLIAM RICHARD SHORTEN, Minister for Financial Services & Superannuation and Minister for Employment & Workplace Relations, make this exemption under section 791C of the *Corporations Act 2001* (the *Act*).

Dated 27.2.2013 .....

Minister for Financial Services & Superannuation and Minister for Employment & Workplace Relations

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### **Name of exemption**

1. This exemption is the *Corporations (i-Swap AUD NZD Pty Ltd) Exemption Notice 2012*.

### **Commencement**

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

### **Exemption**

3. The exempt market operated by i-Swap in this jurisdiction is exempt from the operation of Part 7.2 of the Act.

### **Where this exemption applies**

4. This exemption applies where all of the following matters in this paragraph 4 are satisfied.

#### *Financial products*

- (a) Any dealing in a financial product on the exempt market is limited to a dealing in an eligible financial product.

#### *Trading on the market: market operator*

- (b) i-Swap does not deal in financial products on the exempt market:
  - (i) on its own behalf; or
  - (ii) on behalf of a person who is not a professional investor.

#### *Trading on the market: participant*

- (c) i-Swap ensures that a person carrying on business in this jurisdiction does not directly participate in the exempt market unless the person:
  - (i) is a professional investor dealing in a financial product on its own behalf; or
  - (ii) is a professional investor dealing in a financial product on behalf of a person who is a professional investor.

#### *Clearing and settlement facility*

- (d) Neither i-Swap nor an associate of i-Swap operates a clearing and settlement facility in relation to the exempt market.

Note: For the avoidance of doubt, paragraph (d) does not prohibit i-Swap or an associate from providing information about, or establishing procedures dealing with, the settlement of transactions effected through the exempt market.

*Cooperation with ASIC*

- (e) i-Swap has entered into a written arrangement with ASIC for cooperation with ASIC in relation to this exemption and the subject matter to which this exemption relates.

*Provision of financial services*

- (f) i-Swap holds an Australian financial services licence covering the provision of financial services in this jurisdiction in connection with the operation of the exempt market.

**Conditions**

- 5. This exemption ceases to apply if i-Swap fails to take reasonable steps to comply with any of the matters set out in this paragraph 5.

*Operation of the market*

- (a) i-Swap, in all material respects, must operate the exempt market in the way set out in the application for exemption.

*Managing conflicts of interest*

- (b) i-Swap must have adequate arrangements in place for managing its conflicts of interest arising from operating the exempt market.

*Reporting: adverse findings*

- (c) If i-Swap becomes aware that i-Swap or a director or secretary of i-Swap is covered by one or more of the following matters, i-Swap must, within 7 days after becoming aware of the matter, give a written notice to ASIC advising of the matter:
  - (i) the person is the subject of a declaration of contravention in relation to a provision of the Act;
  - (ii) the person has been convicted of an offence under the Act;

- (iii) in the case of a director or secretary—the person has been disqualified from managing corporations under Part 2D.6 of the Act;
- (iv) the person has been banned or disqualified from providing financial services under Division 8 of Part 7.6 of the Act.

*Reporting: disciplinary action against participant*

- (d) If i-Swap takes disciplinary action against an Australian participant of the exempt market, i-Swap must, as soon as practicable, give a written notice to ASIC that includes the following details:
  - (i) the participant's name;
  - (ii) the reason for and nature of the action taken;
  - (iii) when the action was taken.

*Reporting: suspected contraventions by participant*

- (e) If i-Swap 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 the obligations imposed by i-Swap in relation to the exempt market, i-Swap must, as soon as practicable, give a written notice to ASIC that includes the following details:
  - (i) the participant's name; and
  - (ii) details of the contravention or impending contravention; and
  - (iii) i-Swap's reason for that belief.

*Assistance to ASIC*

- (f) If i-Swap receives a reasonable request from ASIC to give assistance (which may include giving access to any information, document or books held by i-Swap) to ASIC, or to a person authorised by ASIC, in relation to the operation of the exempt market, i-Swap must provide that assistance.

*Record-keeping*

- (g) i-Swap must have adequate arrangements in place for the recording of order information and transactions effected through the exempt market.

- (h) i-Swap must keep for a period of at least 5 years the following records of order information and transactions effected through the exempt market:
  - (i) the date and time that the order was received;
  - (ii) the identity of the participant placing the order;
  - (iii) the name and quantity of the financial product to which the order applies;
  - (iv) the designation of the order as a buy or sell order;
  - (v) any limit or stop price prescribed by the order;
  - (vi) the date and time at which the order expires;
  - (vii) details of any modification or cancellation of the order;
  - (viii) the price, quantity, date and time of execution of the order; and
  - (ix) the identities of the counterparties to the transaction.

*Annual report*

- (i) i-Swap must, within three months after the end of its financial year, give ASIC an annual report that sets out:
  - (i) the extent to which i-Swap has complied with this exemption; and
  - (ii) the following information:
    - (A) a description of the activities that i-Swap undertook in the financial year in relation to the operation of the exempt market;
    - (B) if any material system outages occurred during the financial year that prevented Australian participants from participating in the exempt 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;

- (iii) the names and number of Australian participants who directly participated in the exempt market at any time throughout the financial year, identifying those Australian participants who, as at the last day of the financial year, were allowed to directly participate in the market;
- (iv) details of the volume of trading on the exempt market by Australian participants throughout the financial year;
- (v) the number and nature of significant complaints made to i-Swap by Australian participants who participated in the exempt market during the financial year, and the action taken by i-Swap in response to each complaint;
- (vi) any specific regulatory issues in relation to the exempt market operated by i-Swap in this jurisdiction or a financial market operated by i-Swap outside this jurisdiction, that i-Swap encountered during the financial year and actions taken to resolve those issues;
- (vii) details of any significant conflicts of interest identified by i-Swap in relation to its operation of the exempt market during the financial year, and how each conflict of interest was managed.

*Audit report*

- (j) If the Minister in writing requests i-Swap to obtain an audit report, prepared by either ASIC or another person or body that is a suitably qualified person, in relation to the annual report mentioned in paragraph (i) or on any information or statements accompanying the annual report, i-Swap must comply with the request.

*Reporting: operating status of market*

- 6. i-Swap must, within 7 days, notify ASIC in writing if it ceases to operate the exempt market in this jurisdiction.

**Interpretation**

- 7. In this exemption:
  - (a) italicised headings do not form part of this exemption;
  - (b) ***application for exemption*** means the application dated 11 December 2012 (including any supplementary correspondence provided by i-Swap to ASIC before this exemption is made) for an exemption from the

operation of Part 7.2 of the Act of the financial market operated by i-Swap.

***Australian participant*** means a participant carrying on business in this jurisdiction.

***eligible financial product*** means a financial product of the following kinds:

- (a) an interest rate derivative;

***exempt market*** means the facility through which:

- (a) offers to acquire or dispose of eligible financial products are regularly made or accepted; or
- (b) offers or invitations are regularly made to acquire or dispose of eligible financial products that are intended to result or may reasonably be expected to result, directly or indirectly, in:
  - (i) the making of offers to acquire or dispose of eligible financial products; or
  - (ii) the acceptance of such offers.

***i-Swap*** means i-Swap AUD NZD Pty Ltd ACN 158 624 723.

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