



## **Corporations (ICAP Brokers Pty Limited) Exemption Notice Variation 2013 (No.1)**

*Corporations Act 2001*

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I, BERNIE RIPOLL, Parliamentary Secretary to the Treasurer, make this Variation under subsection 791C(2) of the *Corporations Act 2001*.

Dated 23.7.13 .....

A handwritten signature in black ink, appearing to read 'B. Ripoll', is written over the signature line.

Parliamentary Secretary to the Treasurer

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### **1. Name of Variation**

This Variation is the *Corporations (ICAP Brokers Pty Limited) Exemption Notice Variation 2013 (No.1)*.

### **2. Commencement**

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

### **3. Variation**

*Corporations (ICAP Brokers Pty Limited) Exemption Notice 2010* is varied as described in the Schedule.

## Schedule                      Variation

(Section 3)

### [1]        Sections 4 to 17

*Omit sections 4 to 17 and substitute the following*

#### **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) ICAP Brokers 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) ICAP Brokers 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 ICAP Brokers nor an associate of ICAP Brokers operates a clearing and settlement facility in relation to the exempt market.

Note: For the avoidance of doubt, paragraph (d) does not prohibit ICAP Brokers 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) ICAP Brokers 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) ICAP Brokers 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 ICAP Brokers fails to take reasonable steps to comply with any of the matters set out in this paragraph 5.

*Operation of the market*

- (a) ICAP Brokers, in all material respects, must operate the exempt market in the way set out in the Application.

*Managing conflicts of interest*

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

*Reporting: adverse findings*

- (c) If ICAP Brokers becomes aware that ICAP Brokers or a director or secretary of ICAP Brokers is covered by one or more of the following matters, ICAP Brokers 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 ICAP Brokers takes disciplinary action against an Australian participant of the exempt market, ICAP Brokers 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 ICAP Brokers 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 ICAP Brokers in relation to the exempt market, ICAP Brokers 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) ICAP Brokers' reason for that belief.

*Assistance to ASIC*

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

*Record-keeping*

- (g) ICAP Brokers must have adequate arrangements in place for the recording of order information and transactions effected through the exempt market.
- (h) ICAP Brokers 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) ICAP Brokers must, within three months after the end of its financial year, give ASIC an annual report that sets out:
  - (i) the extent to which ICAP Brokers has complied with this exemption; and
  - (ii) the following information:
    - (A) a description of the activities that ICAP Brokers 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 ICAP Brokers by Australian participants who participated in the exempt market during the financial year, and the action taken by ICAP Brokers in response to each complaint;
- (vi) any specific regulatory issues in relation to the exempt market operated by ICAP Brokers in this jurisdiction or a financial market operated by ICAP Brokers outside this jurisdiction, that ICAP Brokers encountered during the financial year and actions taken to resolve those issues;
- (vii) details of any significant conflicts of interest identified by ICAP Brokers 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 ICAP Brokers 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, ICAP Brokers must comply with the request.

*Reporting: operating status of market*

- 6. ICAP Brokers 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* means:
    - (i) the application dated 29 November 2004 for an exemption from the operation of Part 7.2 of the Act of the financial market operated by ICAP Brokers (including any supplementary correspondence provided by ICAP Brokers to ASIC before the exemption was made); and

- (ii) the application dated 22 October 2007 for a revocation of the Corporations (ICAP Brokers Pty Ltd) Exemption Notice 2004 and for an exemption from the operation of Part 7.2 of the Act of the financial market operated by ICAP Brokers (including any supplementary correspondence provided by ICAP Brokers to ASIC before the exemption was made); and
- (iii) the application dated 25 February 2013 for a variation to the Corporations (ICAP Brokers Pty Limited) Exemption Notice 2010 (including any supplementary correspondence provided by ICAP Brokers to ASIC before this exemption variation is made).

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

**bond** means:

- (a) a debenture as defined in section 9 of the Act; or
- (b) a chose in action, where that chose in action 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.

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

- (a) a bond;
- (b) a credit derivative;
- (c) 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.

***ICAP Brokers*** means ICAP Brokers Pty Ltd ACN 002 103 068.

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