



Corporations (ICAP Europe 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 29 JANUARY 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

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1 Name of Notice

This Notice is the *Corporations (ICAP Europe Limited) Exemption Notice 2010*.

2 Commencement

This Notice commences on the day of its publication in the *Gazette*.

3 Definitions

In this Notice:

Act means the *Corporations Act 2001*.

ASIC Class Order [CO 03/1099] means the document with that number and titled 'UK FSA regulated financial service providers' that was:

- (a) issued by ASIC on 22 December 2003; and
- (b) notified in the *Gazette* on 23 December 2003; and
- (c) in force on the commencement of this Notice.

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

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

ICAP Europe means the corporation known as ICAP Europe Limited.

i-forwards market means the financial market in foreign exchange contracts that are foreign exchange forwards operated by ICAP Europe in Australia.

Note The following expressions used in this Notice are defined in the Act:

- ASIC (section 9)
- associate (section 9)
- Australian financial services licence (section 761A)
- clearing and settlement facility (section 768A)
- corporation (section 57A)
- declaration of contravention (section 1317E)
- financial market (section 761A)
- financial product (section 761A)
- financial service (section 761A)
- financial services licensee (section 761A)
- financial year (section 323D)
- operating rules (section 761A)
- participant (section 761A)
- professional investor (section 9).

4 Exemption

For section 791C of the Act, and subject to the conditions mentioned in sections 5 to 15, the *i-forwards market* is exempt from the operation of Part 7.2 of the Act.

5 Operation of *i-forwards market*

- (1) ICAP Europe must operate the *i-forwards market* in all essential details in the way set out in its application to ASIC for an exemption from the operation of Part 7.2 of the Act dated 12 July 2007.
- (2) ICAP Europe must at all times comply with ASIC Class Order [CO 03/1099].
- (3) ICAP Europe, or an associate of ICAP Europe, must not operate a clearing and settlement facility for the *i-forwards market*.

6 Participants who may trade on *i-forwards market*

- (1) ICAP Europe must not admit an Australian participant to the *i-forwards market*, or allow an Australian participant to enter into a trade on the *i-forwards market*, unless the Australian participant is a professional investor who is trading on its own behalf or on behalf of another professional investor.
- (2) ICAP Europe must not admit a foreign participant to the *i-forwards market*, or allow a foreign participant to enter into a trade on the *i-forwards market*, unless the foreign participant:
 - (a) is a professional or institutional investor in the jurisdiction in which the participant trades; and

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- (b) is trading on its own behalf or on behalf of another professional or institutional investor.
- (3) ICAP Europe must not trade on the i-forwards market on its own behalf or on behalf of another investor.

7 Arrangements to manage conflicts of interest

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

8 Annual report

Within 3 months after the end of each financial year for ICAP Europe, ICAP Europe must give an annual report to ASIC that sets out information about the extent to which ICAP Europe has complied with the conditions of this Notice during the financial year, including the following:

- (a) a description of the activities in relation to the operation of the i-forwards market that ICAP Europe undertook during the financial year;
- (b) if any material system outages occurred during the financial year that prevented Australian participants from using the i-forwards market:
 - (i) the number of 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 names and number of Australian participants authorised to access the i-forwards market on the first and last days of the financial year;
- (d) details of the volume of trading on the i-forwards market by Australian participants throughout the financial year;
- (e) the number and nature of significant complaints made to ICAP Europe by Australian participants who used the i-forwards market during the financial year, and the action taken by ICAP Europe in response to each complaint;
- (f) any specific regulatory issues that ICAP Europe encountered during the financial year and actions taken to resolve those issues (whether inside or outside Australia);
- (g) details of any significant conflicts of interest identified by ICAP Europe in relation to its operation of the i-forwards market during the financial year, and how each conflict of interest was resolved.

9 Minister may require ICAP Europe to obtain audit about annual report

- (1) The Minister may, by written notice given to ICAP Europe, require ICAP Europe to obtain an audit report about:
 - (a) the annual report mentioned in section 8; and
 - (b) any information or statements accompanying the annual report.
- (2) The Minister may, in the notice, nominate either of the following to carry out the audit and prepare an audit report:
 - (a) ASIC;
 - (b) a specified person or body that is suitably qualified to carry out the audit.
- (3) ICAP Europe must comply with a notice given to it under this section.

10 Reporting of certain events involving Australian participant

- (1) If ICAP Europe takes any disciplinary action against an Australian participant in the i-forwards market, ICAP Europe 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) when the action was taken.
- (2) If ICAP Europe has reason to suspect that an Australian participant has committed, is committing, or is about to commit, a significant contravention of the Act or the i-forwards market's operating rules, ICAP Europe must, as soon as practicable, advise ASIC in writing of:
 - (a) the participant's name; and
 - (b) details of the contravention; and
 - (c) ICAP Europe's reasons for that suspicion.

11 Reporting of certain events involving ICAP Europe, its director or secretary

- (1) ICAP Europe must, within 14 days of becoming aware of a matter mentioned in subsection (2), advise ASIC in writing of the matter.
- (2) For subsection (1), the matters are that ICAP Europe, or a director or secretary of ICAP Europe:
 - (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.

12 Notice if ICAP Europe ceases to operate i-forwards market

ICAP Europe must, within 7 days of ceasing to operate the i-forwards market, advise ASIC in writing of that fact.

13 Requirement to assist ASIC

- (1) If ICAP Europe receives a reasonable request in writing to do so, ICAP Europe 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 i-forwards market.
- (2) The assistance may include giving access to any information, document or books held by ICAP Europe.

14 Requirement to enter written arrangement with ASIC

ICAP Europe must enter into a written arrangement with ASIC for cooperation with ASIC in matters about this Notice.

15 Transaction recording

- (1) ICAP Europe must ensure that arrangements are made for recording information about orders placed and transactions effected on the i-forwards market.
- (2) The arrangements must be to the satisfaction of ASIC.
- (3) To comply with subsection (1), the records must be kept in sufficient detail to show the following particulars:
 - (a) the date and time that an 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 and quantity, and the date and time of execution, of the order;
 - (i) the identities of the counterparties to the transaction.
- (4) ICAP Europe must keep the records for at least 7 years from the time they are made.
- (5) On request by ASIC, ICAP Europe must make the records available to ASIC.