



## Corporations (MMADX 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*).

A handwritten signature in black ink, appearing to read 'WR Shorten', written over a horizontal line.

Dated 12-9-12.....

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

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**Name of exemption**

1. This exemption is the *Corporations (MMADX 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 MMADX 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) MMADX 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) MMADX 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 MMADX nor an associate of MMADX operates a clearing and settlement facility in relation to the exempt market.

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

*Operation of the market*

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

*Managing conflicts of interest*

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

*Reporting: adverse findings*

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

*Assistance to ASIC*

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

*Record-keeping*

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

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

*Reporting: operating status of market*

- 6. MMADX 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 22 August 2012 (including any supplementary correspondence provided by MMADX 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 MMADX.

***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) an interest rate derivative;
- (c) a deposit-taking facility made available by an ADI (within the meaning of the *Banking Act 1959*) in the course of its banking business (within the meaning of that Act), other than an RSA (retirement savings account) (within the meaning of the *Retirement Savings Account Act 1997*).

***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.

***MMADX*** means MMADX Pty Ltd ACN 153 136 193

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