



## Corporations (TFS Australia Pty Limited) Exemption Notice 2010

*Corporations Act 2001*

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I, CHRIS BOWEN, Minister for Financial Services, Superannuation and Corporate Law, make this Notice under section 791C of the *Corporations Act 2001*.

Dated 24 February 2010

A handwritten signature in black ink, appearing to read 'Chris Bowen', is written over the printed name.

Minister for Financial Services, Superannuation and Corporate Law

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**1 Name of Notice**

This Notice is the *Corporations (TFS Australia Pty Limited) Exemption Notice 2010*.

**2 Commencement**

This Notice commences on the date of its notification in the *Gazette*.

**3 Definitions**

In this Notice:

*Act* means the *Corporations Act 2001*.

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

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

*ISDA Master Agreement* means a master agreement issued by the International Swaps and Derivatives Association, Inc.

*TFS* means the corporation known as TFS Australia Pty Limited.

*Volbroker market* means the financial market operated by TFS.

*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)
- financial market (section 767A)
- financial service (section 761A)
- financial year (section 323D)
- foreign exchange contract (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 16, the Volbroker market is exempt from the operation of Part 7.2 of the Act.

**5 Operation of Volbroker market**

- (1) TFS must operate the Volbroker market in all essential details in the way set out in the following:
  - (a) its application to ASIC, dated 5 September 2007, for an exemption from the operation of Part 7.2 of the Act;
  - (b) the letter and attachments to that letter dated 13 February 2008;

(c) the letter dated 18 March 2008.

- (2) TFS must not:
- (a) operate a clearing and settlement facility for the Volbroker market; or
  - (b) engage any other person to operate a clearing and settlement facility for the Volbroker market.

## **6 Licensing of TFS**

TFS must hold an Australian financial services licence that covers the provision of the financial services involved in the operation of the Volbroker market.

## **7 Participants who may trade on Volbroker market**

- (1) TFS must not admit an Australian participant to the Volbroker market, or allow an Australian participant to enter into a trade on the Volbroker market, unless the Australian participant is a professional investor that is trading on its own behalf or on behalf of another professional investor.
- (2) TFS must not admit a foreign participant, or allow a foreign participant, to enter into a trade on the Volbroker market unless the foreign participant is:
  - (a) a professional or institutional investor in the jurisdiction in which the participant trades; and
  - (b) is trading on its own behalf or on behalf of another professional or institutional investor.
- (3) TFS must not trade on the Volbroker market on its own behalf or on behalf of another investor.

## **8 Financial products traded on Volbroker market**

TFS may facilitate trading in a financial product on the Volbroker market only if the financial product is a foreign exchange contract that is a foreign exchange option entered into under an ISDA Master Agreement or another master agreement.

## **9 Arrangements to manage conflicts of interest**

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

**10 Annual report**

Within 3 months of the end of each financial year, TFS must give an annual report to ASIC that sets out information about the extent to which TFS 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 Volbroker market that TFS undertook during the financial year;
- (b) if any material system outages occurred during the financial year that prevented Australian participants from using the Volbroker 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;
- (c) the names and number of Australian participants authorised to access the Volbroker market on the first and last days of the financial year;
- (d) details of the volume of trading on the Volbroker market by Australian participants during the financial year;
- (e) the number and nature of significant complaints made to TFS by Australian participants who used the Volbroker market during the financial year, and the action taken by TFS in response to each complaint;
- (f) any specific regulatory issues that TFS encountered during the financial year, and the actions taken to resolve each of those issues (whether inside or outside Australia);
- (g) details of any significant conflicts of interest identified by TFS in relation to its operation of the Volbroker market during the financial year, and how each conflict of interest was resolved.

**11 Minister may require TFS to obtain audit about annual report**

- (1) The Minister may, by written notice, require TFS to obtain an audit report about:
  - (a) the annual report mentioned in section 10; and
  - (b) any information or statements accompanying the annual report.
- (2) The Minister may nominate either of the following to undertake the audit:
  - (a) ASIC;
  - (b) a specified person or body that is suitably qualified.

**12 Notice of certain events involving Australian participant**

- (1) If TFS takes any disciplinary action against an Australian participant of the Volbroker market, TFS 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 TFS 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 Volbroker market's operating rules, TFS must, as soon as practicable, advise ASIC in writing of:
  - (a) the participant's name; and
  - (b) details of the contravention or impending contravention; and
  - (c) TFS's reasons for that belief.
- 13 Notice of certain events involving TFS, its director or secretary**

TFS must, within 7 days, advise ASIC in writing if TFS becomes aware that TFS, or a director or secretary of TFS:

  - (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 from providing financial services.
- 14 Notice if TFS ceases to operate Volbroker market**

TFS must, within 7 days, advise ASIC in writing if it ceases to operate the Volbroker market in Australia.
- 15 Requirement to assist ASIC**

If TFS receives a reasonable request from ASIC to give assistance to ASIC, or a person authorised by ASIC, about the performance of ASIC's functions in relation to the operation of the Volbroker market, TFS must:

  - (a) provide the assistance; and
  - (b) give ASIC access to any information, documents or books held by or relating to TFS.
- 16 Requirement to enter written arrangement with ASIC**

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