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Corporations (Tullett Prebon (Australia) Pty Ltd) Exemption Notice 2010

Corporations Act 2001

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

Dated 6 May 2010

Minister for Financial Services, Superannuation and Corporate Law

1. Name of Notice

This Notice is the *Corporations (Tullett Prebon (Australia) Pty Ltd) Exemption Notice 2010*.

2. Commencement

This Notice commences on the day it is notified in the *Gazette*.

3. Definitions

In this Notice:

Act means the *Corporations Act 2001*.

Application means the application for an exemption from the operation of Part 7.2 of the Act, submitted to ASIC by TPA, dated 21 August 2008, and subsequent correspondence prior to the issuing of this notice and relating to the application.

ASIC means the Australian Securities and Investments Commission.

Australian financial services licence has the meaning given by section 761A of the Act.

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

bond means:

- a) a debenture as defined in section 9 of the Act; and
- 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.

clearing and settlement facility has the meaning given by section 768A of the Act.

derivative has the same meaning as in section 761D of the Act.

financial year means TPA's financial year.

Market means the financial market for bonds and credit derivatives that is operated by TPA.

participant has the same meaning as in section 761A of the Act.

professional investor has the meaning given by section 9 of the Act.

TPA means Tullett Prebon (Australia) Pty Limited.

4. Exemption

For section 791C of the Act, and subject to the conditions mentioned in sections 5 to 17 of this Notice, the Market is exempt from the operation of Part 7.2 of the Act.

5. Operation of the Market

- (1) TPA must operate the Market in all material ways as set out in the Application.
- (2) TPA, or an associate of TPA:
 - (a) must not operate a clearing and settlement facility for the Market; and
 - (b) may provide clearing and settlement arrangements for the Market only by providing information and by establishing procedures for the settlement of transactions effected through the Market.

6. Licensing of TPA

TPA must hold an Australian financial services licence that covers the provision of the financial services involved in the operation of the Market.

7. Participants who may trade on the Market

- (1) TPA may admit an Australian participant to the Market, or allow an Australian participant to enter into a trade on the Market, only if the Australian participant is a professional investor which is trading on its own behalf.
- (2) TPA must not trade on the Market on its own behalf or on behalf of another professional investor.

8. Financial products that may be traded on the Market

Only bonds and credit derivatives are permitted to be traded on the Market.

9. Arrangements to manage conflicts of interest

- (1) TPA must establish and maintain arrangements to manage any conflicts of interest about activities undertaken by TPA in the operation of the Market.
- (2) The arrangements must be to the satisfaction of ASIC.

10. Arrangements to record order information and transactions

- (1) TPA must ensure that satisfactory arrangements are made for recording order information and transactions effected through the Market.
- (2) To comply with the condition set out in subsection (1), the records must be kept in sufficient detail to show particulars of:
 - (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 sell order;
 - (e) any limit or stop price prescribed by the order;
 - (f) the date and time at which the order expires;
 - (g) details of any modification or cancellation of the order;

- (h) the price, quantity, date and time of the execution of the order; and
 - (i) the identities of the counterparties to the transaction.
- (3) The records must be kept and be available to ASIC for at least 5 years.

11. Annual report

- (1) Within three months of the end of each financial year, TPA must give a report to ASIC that sets out the extent to which TPA has complied with the conditions in this Notice during that financial year.
- (2) The report must include the following information:
- (a) a description of the activities that TPA has undertaken in the financial year in relation to the operation of the Market;
 - (b) if any material system outages occurred during the financial year that prevented Australian participants from using the Market:
 - (i) the number of such outages;
 - (ii) the duration of each outage;
 - (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 that were authorised to access the Market throughout the reporting period, identifying those still authorised to access the Market on the last day of the financial year;
 - (d) details of the volume of trading on the Market by Australian participants throughout the financial year;
 - (e) the number and nature of significant complaints made to TPA by Australian participants who used the Market during the financial year, and the action taken by TPA in response to each complaint;
 - (f) any specific regulatory issues that TPA encountered during the financial year and actions taken to resolve those issues (whether inside or outside Australia); and
 - (g) details of any significant conflict of interest identified by TPA in relation to its operation of the Market during the financial year, and how each conflict of interest was resolved.

12. Minister may require TPA to submit to an audit

- (1) The Minister may, by written notice, require TPA to obtain an audit report about:
 - (a) the annual report mention in section 11; 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; or
 - (b) another person or body that is suitably qualified.

13. Reporting of certain events involving an Australian participant

- (1) If TPA takes any disciplinary action against an Australian participant of the Market, TPA must, as soon as practicable, advise ASIC in writing of:
 - (a) the participant's name;
 - (b) the reason for and nature of the action taken; and
 - (c) when the action was taken.
- (2) If TPA 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 their obligations imposed by TPA in relation to the Market, TPA must, as soon as practicable, advise ASIC in writing of:
 - (a) the Australian participant's name; and
 - (b) details of the contravention or impending contravention; and
 - (c) TPA's reason for that belief.

14. Reporting of certain events involving TPA or a director or secretary of TPA

- (1) If TPA becomes aware that TPA, or a director or secretary of TPA:
 - (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;
- (2) TPA must advise ASIC of the matter, in writing, within seven days after TPA becomes aware of the matter.

15. Notice if TPA ceases to operate the Market

TPA must, within seven days, advise ASIC in writing if it ceases to operate the Market in Australia.

16. Requirement to assist ASIC

If TPA receives a reasonable request from ASIC to give assistance to ASIC, or a person authorised by ASIC, about the performance of ASICs functions in relation to the operation of the Market, TPA must:

- (a) provide the assistance; and
- (b) give ASIC access to any information, document and books held by TPA.

17. Requirement to enter into written arrangement with ASIC

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