



Corporations (TriOptima AB) Exemption Notice 2012

Corporations Act 2001

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*).

Dated 27-2-2012

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

Name of exemption

1. This exemption is the *Corporations (TriOptima AB) Exemption Notice 2012*.

Commencement

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

Exemption

3. The exempt market operated by TriOptima AB 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 (by variance, termination or replacement) 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) TriOptima AB 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) TriOptima AB 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 (by variance, termination or replacement) in a financial product on its own behalf; or
 - (ii) is a professional investor dealing (by variance, termination or replacement) in a financial product on behalf of a person who is a professional investor.

Clearing and settlement facility

- (d) Neither TriOptima AB nor an associate of TriOptima AB operates a clearing and settlement facility in relation to the exempt market.

Note: For the avoidance of doubt, paragraph (d) does not prohibit TriOptima AB 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) TriOptima AB 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) TriOptima AB is exempt from the requirement to hold an Australian financial services licence for financial services provided in this jurisdiction in connection with the operation of the exempt market.

Note: This exemption does not exempt TriOptima AB from the requirement to hold an Australian financial services licence.

Submission to Australian jurisdiction

- (g) TriOptima AB satisfies all of the following:
- (i) TriOptima AB has a current permission to receive and transmit orders in relation to one or more financial instruments given by the FI and has provided ASIC with a copy of that permission;
 - (ii) TriOptima AB has an agent at the time TriOptima AB first purports to rely on this exemption and, from that time, has not failed to have an agent for any consecutive period of 10 business days;
 - (iii) TriOptima AB has provided ASIC, to the satisfaction of ASIC, with a deed of TriOptima AB for the benefit of, and enforceable by, ASIC and the other persons referred to in subsection 659B(1) of the Act, which deed provides that:
 - (I) the deed is irrevocable except with the prior written consent of ASIC;
 - (II) TriOptima AB submits to the non-exclusive jurisdiction of the Australian courts in legal proceedings conducted by ASIC (including under section 50 of the ASIC Act) and, in relation

to proceedings relating to a financial services law, by any person referred to in subsection 659B(1) of the Act and whether brought in the name of ASIC or the Crown or otherwise;

- (III) TriOptima AB covenants to comply with any order of an Australian court in respect of any matter relating to its operation of the exempt market in this jurisdiction;
- (IV) TriOptima AB covenants that, on written request of either the FI or ASIC, it will give or vary written consent and take all other practicable steps to enable and assist the FI to disclose to ASIC and ASIC to disclose to the FI any information or document that the FI or ASIC has that relates to any Australian participant or TriOptima AB's operation of the exempt market (excluding any information or document that relates to specific participants other than Australian participants).

Conditions

- 5. This exemption ceases to apply if TriOptima AB fails to take reasonable steps to comply with any of the matters set out in this paragraph 5.

Operation of the market

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

Conduct

- (b) TriOptima AB must do all things necessary to ensure that any financial services provided by TriOptima AB in connection with the operation of the exempt market are provided efficiently, honestly and fairly.

Resources

- (c) TriOptima AB must have available adequate resources (including financial, technological and human resources) to provide the financial services in connection with the operation of the exempt market.

Managing conflicts of interest

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

Reporting: adverse findings

- (e) If TriOptima AB becomes aware that TriOptima AB or a director or secretary of TriOptima AB is covered by one or more of the following matters, TriOptima AB 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

- (f) If TriOptima AB takes disciplinary action against an Australian participant of the exempt market, TriOptima AB 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

- (g) If TriOptima AB 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 TriOptima AB in relation to the exempt market, TriOptima AB 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) TriOptima AB's reason for that belief.

Assistance to ASIC

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

Record-keeping

- (i) TriOptima AB must have adequate arrangements in place for the recording of information submitted by Australian participants and unwind proposals that affect Australian participants.
- (j) TriOptima AB must keep for a period of at least 5 years the following records of information submitted by Australian participants:
 - (i) transactions submitted to TriOptima AB;
 - (ii) conditions and tolerances submitted to TriOptima AB;
 - (iii) the date and time that the information was submitted;
 - (iv) the identity of the Australian participant submitting the information; and
 - (v) unwind proposals.

Annual report

- (k) TriOptima AB must, within three months after the end of its financial year, give ASIC an annual report that sets out:
 - (i) the extent to which TriOptima AB has complied with this exemption; and
 - (ii) the following information:
 - (A) a description of the activities that TriOptima AB 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 aggregate notional amount of transactions which are varied (by increase or decrease of notional amount), terminated or replaced by Australian participants throughout the financial year;
 - (v) the number and nature of significant complaints made to TriOptima AB by Australian participants who participated in the exempt market during the financial year, and the action taken by TriOptima AB in response to each complaint;
 - (vi) any specific regulatory issues in relation to the exempt market operated by TriOptima AB in this jurisdiction or a financial market operated by TriOptima AB outside this jurisdiction, that TriOptima AB encountered during the financial year and actions taken to resolve those issues;
 - (vii) details of any significant conflicts of interest identified by TriOptima AB in relation to its operation of the exempt market during the financial year, and how each conflict of interest was managed.

Audit report

- (l) If the Minister in writing requests TriOptima AB 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 (k) or on any information or statements accompanying the annual report, TriOptima AB must comply with the request.

Reporting: operating status of market

- 6. TriOptima AB 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) ***agent*** means a natural person resident in this jurisdiction or a company, whose name and address were last notified to ASIC by TriOptima AB for the purposes of this exemption, and who is authorised to accept on TriOptima AB's behalf, service of process from ASIC and, in relation to proceedings relating to a financial services law, from any person referred to in subsection 659B(1) of the Act.

application for exemption means the application dated 16 October 2012 (including any supplementary correspondence provided by TriOptima AB 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 TriOptima AB.

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

TriOptima AB means TriOptima AB a Swedish investment firm, regulated pursuant to the EU Markets in Financial Instruments Directive (MiFID; 2004/39/EC), with an EU-passported Swedish licence to receive and transmit orders in relation to one or more financial instruments.

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

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

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

FI means the Swedish Financial Supervisory Authority –
Finansinspektionen.

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