



## Corporations (Vyapar Capital Market Partners (UK) Limited) Exemption Notice 2010

*Corporations Act 2001*

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

Dated 22 February 2010

Minister for Financial Services, Superannuation and Corporate Law

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### 1. Name of Notice

This Notice is the *Corporations (Vyapar Capital Market Partners (UK) Limited) 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 holding an Australian market licence, submitted to ASIC by Vyapar Capital Market Partners LLC, on behalf of Vyapar Capital Market Partners (UK) Limited, dated 15 May 2009, and supplemented by material dated 21 July 2009.

**ASIC** means the Australian Securities and Investments Commission.

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

**Class Order [Co 03/1099]** means Class Order [03/1099], titled 'UK FSA regulated financial service providers':

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

**clearing and settlement facility** has the same meaning as in Chapter 7 of the Act.

**derivative** has the same meaning as in Chapter 7 of the Act.

**financial year** means Vyapar's financial year.

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

**participant** has the same meaning as in Chapter 7 of the Act.

**professional investor** has the same meaning as in Chapter 7 of the Act.

**UK FSA** means the Financial Services Authority of the United Kingdom.

**Vyapar** means Vyapar Capital Market Partners (UK) Limited, a company incorporated in the United Kingdom.

**Vyapar Market** means the financial market operated by Vyapar, known as the Credit Default Swap Repositioning Platform.

#### **4. Exemption**

For section 791C of the Act, and subject to the conditions mentioned in sections 5 to 16 of this Notice, the Vyapar Market is exempt from the operation of Part 7.2 of the Act.

#### **5. Operation of Vyapar Market**

- (1) Vyapar must operate the Vyapar Market in all essential details in the way set out in the Application.
- (2) Vyapar must, at all times, comply with Class Order [CO 03/1099].

**6. Participants who may trade on the Vyapar Market**

- (1) Vyapar must not admit an Australian participant to the Vyapar Market, or allow an Australian participant to enter into a trade on the Vyapar Market, unless the Australian participant is a professional investor who is trading on its own behalf.
- (2) Vyapar must not trade on the Vyapar Market on its own behalf or on behalf of another investor.
- (3) Vyapar, or an associate of Vyapar:
  - (a) must not operate a clearing and settlement facility for the Vyapar Market; and
  - (b) may provide clearing and settlement arrangements for the Vyapar market only by providing information or by establishing procedures for the settlement of transactions effected through the Vyapar Market.

**7. Financial products that may be traded on the Vyapar Market**

Vyapar may permit trading on the Vyapar Market in a credit derivative only if the credit derivative is created under the ISDA Master Agreement or another master agreement commonly used by counterparties for that purpose.

**8. Arrangements to manage conflicts of interest**

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

**9. Annual report**

- (1) Within three months of the end of each financial year, Vyapar must give a report to ASIC that sets out the extent to which Vyapar has complied with the conditions of the exemption during that financial year.
- (2) The report must include the following information:
  - (a) a description of the activities that Vyapar has undertaken in the financial year in relation to the operation of the Vyapar Market;

- (b) the identity of the Australian participants authorised to access the Vyapar Market on the first and last days of the financial year, respectively;
- (c) details of the volume of trading on the Vyapar Market by Australian participants throughout the financial year;
- (d) the number and nature of significant complaints made to Vyapar by Australian participants in the Vyapar Market during the financial year, and the action taken by Vyapar in response to each complaint;
- (e) any specific regulatory issues that Vyapar encountered during the financial year and the action taken to resolve the issue (inside or outside Australia); and
- (f) details of any significant conflict of interest identified by Vyapar in relation to its operation of the Vyapar Market, and how each conflict of interest was resolved.

**10. Reporting of certain events involving an Australian participant**

- (1) If Vyapar takes disciplinary action against an Australian participant in the Vyapar Market, Vyapar must, as soon as practicable, advise ASIC in writing of:
  - (a) the participant's name; and
  - (b) the reason for and nature of the action taken; and
  - (c) when the action was taken.
- (2) If Vyapar has information that would cause a person to believe or suspect, on reasonable grounds, that an Australian participant has committed, is committing, or is about to commit, a significant contravention of the Act, Vyapar 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) Vyapar's reason for that belief or suspicion.

**11. Reporting of certain events involving Vyapar's and its directors or secretary**

If Vyapar becomes aware that Vyapar, or a director or secretary of Vyapar:

- (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;

Vyapar must advise ASIC of the matter, in writing, within 7 days after Vyapar becomes aware of the matter.

## **12. Transaction recording**

- (1) Vyapar must ensure that satisfactory arrangements are made for recording order information and transactions effected through the Vyapar market.
- (2) To comply with the condition set forth in paragraph (1), the records must be kept in sufficient detail to show particulars of:
  - (a) the date and time that an acquisition or disposal in response to a market recommendation was effected;
  - (b) the identity of the participant effecting the acquisition or disposal;
  - (c) the name and quantity of the financial product to which the acquisition or disposal applies;
  - (d) the designation or the confirmation to the Vyapar market as an acquisition or disposal;
  - (e) details of any modification or cancellation of the acquisition or disposal or confirmation;
  - (f) the price, quantity, date and time of execution of the order; and
  - (g) the identities of the counterparties to the transaction.
- (3) The records must be kept for at least 5 years.

## **13. Notice if Vyapar ceases to operate the Vyapar Market**

Vyapar must advise ASIC, within 7 days and in writing, if it ceases to provide access to the Vyapar Market to Australian participants.

**14. Minister may require Vyapar to submit to an audit**

- (1) The Minister may, by written notice, require Vyapar to submit to audit in relation to:
  - (a) the annual report mentioned in section 9; and
  - (b) any information or statement 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 to undertake audits.

**15. Requirement to assist ASIC**

If Vyapar receives a reasonable request for ASIC to give assistance to ASIC, or a person authorised by ASIC, in connection with the performance of ASIC's functions in relation to the operation of the Vyapar Market, Vyapar must:

- (a) provide that assistance; or
- (b) give ASIC, or person authorised by ASIC, access to any information, document or books held by or relating to the Vyapar Market.

**16. Requirement to enter into written arrangement with ASIC**

Vyapar must enter into a written arrangement with ASIC for cooperation with ASIC in matters relating to this Notice.