



Corporations (EquiLend LLC) Exemption Notice 2014

Corporations Act 2001

I, MATHIAS CORMANN, Acting Assistant Treasurer, make this exemption under section 791C of the *Corporations Act 2001 (the Act)*.

Dated 29-9-2014

Acting Assistant Treasurer

Name of exemption

1. This exemption is the *Corporations (EquiLend LLC) Exemption Notice 2014*.

Commencement

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

Exemption

3. The securities lending facility operated by EquiLend LLC in this jurisdiction is exempt from the operation of Part 7.2 of the Act (the exempt market).

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) EquiLend LLC does not trade on the exempt market on its own behalf or on behalf of another investor.

Trading on the market: participant

- (c) EquiLend LLC 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 EquiLend LLC nor an associate of EquiLend LLC operates a clearing and settlement facility in relation to the exempt market.

Note: For the avoidance of doubt, paragraph (d) does not prohibit EquiLend LLC 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) EquiLend LLC 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) EquiLend LLC must, at all times comply with Class Order [03/1100].
- (g) EquiLend LLC must, at all times, be registered as a broker-dealer with the SEC, and a member of FINRA, that covers the provision of financial services involved in the operation of the EquiLend LLC exempt market.

Conditions

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

Operation of the market

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

Conduct

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

Resources

- (c) EquiLend LLC 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 and to carry out supervisory arrangements.

Managing conflicts of interest

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

Reporting: adverse findings

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

Assistance to ASIC

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

Record-keeping

- (i) EquiLend LLC must have adequate arrangements in place for the recording of loan order information and loan transactions effected through the exempt market.
- (j) EquiLend LLC must keep for a period of at least 5 years the following records of loan order information and loan transactions effected through the exempt market:
 - (i) the date and time that the borrow or loan order was received;
 - (ii) the identity of the participant placing the borrow or loan order;
 - (iii) the name and quantity of the financial product to which the borrow or loan order applies;
 - (iv) the designation of the order as a borrow or loan order;
 - (v) the date and time at which the borrow or loan order expires;
 - (vi) details of any modification or cancellation of the borrow or loan order;
 - (vii) the fee, quantity, date and time of execution of the borrow or loan order; and
 - (viii) the identities of the counterparties to the loan transaction.

Annual report

- (k) EquiLend LLC must, within three months after the end of its financial year, give ASIC an annual report that sets out:
 - (i) the extent to which EquiLend LLC has complied with this exemption; and
 - (ii) the following information:

- (A) a description of the activities that EquiLend LLC 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 EquiLend LLC by Australian participants who participated in the exempt market during the financial year, and the action taken by EquiLend LLC in response to each complaint;
- (vi) any specific regulatory issues in relation to the exempt market operated by EquiLend LLC in this jurisdiction or a financial market operated by EquiLend LLC outside this jurisdiction, that EquiLend LLC encountered during the financial year and actions taken to resolve those issues;
- (vii) details of any significant conflicts of interest identified by EquiLend LLC in relation to its operation of the exempt market during the financial year, and how each conflict of interest was managed.

Reporting

- (l) EquiLend LLC must give the following information to ASIC within 30 days after the end of each reporting period:
 - (i) for each class of financial product that can be loaned or borrowed on the exempt market – the total trade volume by Australian participants for the reporting period;
 - (ii) the total trade values by each Australian participant (borrower and lender) for the reporting period;
 - (iii) for each kind of financial product that can be loaned or borrowed on the exempt market - the total traded quantity by Australian participants for the reporting period;
 - (iv) for each class of financial product that can be loaned or borrowed on the exempt market – details of the ten most traded financial contracts by Australian participants, the volume traded and total trade value for the reporting period;
- (m) For the purposes of paragraph 5(l) "reporting period" means:
 - (i) a period of 6 months, ending on 30 June or 31 December in each year, during which the exempt market is operated in Australia; or
 - (ii) any other another period as notified by ASIC in writing.

Audit report

- (n) If the Minister in writing requests EquiLend LLC 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, EquiLend LLC must comply with the request.

Reporting: operating status of market

6. EquiLend LLC 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 for an exemption from the operation of Part 7.2 of the Act, submitted to ASIC by EquiLend LLC, dated 26 August 2014, and correspondence prior to the issuing of this notice and relating to the exemption application.

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

Class Order [CO 03/1100] means Class Order [03/1100], titled 'US SEC regulated financial service providers':

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

eligible financial product means:

- (a) securities;
- (b) financial products mentioned in paragraphs 764A(1)(b) and 764A(1)(ba) of the Act;
- (c) derivatives limited to convertible debt instruments converting into existing shares; or
- (d) a debenture, stock or bond issued or proposed to be issued by a government.

exempt market means the securities lending platform operated by EquiLend LLC known as "EquiLend" or "BondLend".

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

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

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