



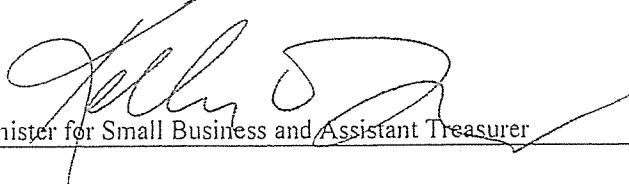
## Corporations (BrokerTec Europe Limited) Exemption Notice 2015

*Corporations Act 2001*

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I, KELLY O'DWYER, Minister for Small Business and Assistant Treasurer make this exemption under section 791C of the *Corporations Act 2001* (the *Act*).

Dated ...18 December 2015

  
Minister for Small Business and Assistant Treasurer

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**Name of exemption**

1. This exemption is the *Corporations (BrokerTec Europe Limited) Exemption Notice 2015*.

**Commencement**

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

**Exemption**

3. The exempt market operated by BrokerTec 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 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) BrokerTec 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) BrokerTec 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 BrokerTec nor an associate of BrokerTec operates a clearing and settlement facility in relation to the exempt market.

Note: For the avoidance of doubt, paragraph (d) does not prohibit BrokerTec 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) BrokerTec 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) BrokerTec 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 BrokerTec from the requirement to hold an Australian financial services licence.

*Submission to Australian jurisdiction*

- (g) BrokerTec satisfies all of the following:
  - (i) BrokerTec has a current permission given by the FCA under Part IV of the FSM Act and has provided ASIC with a copy of that permission;
  - (ii) BrokerTec has an agent at the time BrokerTec 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) BrokerTec has provided ASIC, to the satisfaction of ASIC, with a deed of BrokerTec 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) BrokerTec 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) BrokerTec covenants to comply with any order of an Australian court in respect of any matter relating to the provision of specified kinds of financial services in this jurisdiction and the operation of this market in this jurisdiction;
- (IV) BrokerTec covenants that, on written request of either the FCA or ASIC, it will give or vary written consent and take all other practicable steps to enable and assist the FCA to disclose to ASIC and ASIC to disclose to the FCA any information or document that the FCA or ASIC has that relates to BrokerTec.

### **Conditions**

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

#### *Operation of the market*

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

#### *Conduct*

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

#### *Resources*

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

#### *Reporting: adverse findings*

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

*Assistance to ASIC*

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

*Record-keeping*

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

*Annual report*

- (k) BrokerTec must, within three months after the end of its financial year, give ASIC an annual report that sets out:
  - (i) the extent to which BrokerTec has complied with this exemption; and
  - (ii) the following information:
    - (A) a description of the activities that BrokerTec 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 BrokerTec by Australian participants who participated in the exempt market during the financial year, and the action taken by BrokerTec in response to each complaint;
  - (vi) any specific regulatory issues in relation to the exempt market operated by BrokerTec in this jurisdiction or a financial market operated by BrokerTec outside this jurisdiction, that BrokerTec encountered during the financial year and actions taken to resolve those issues;
  - (vii) details of any significant conflicts of interest identified by BrokerTec 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 BrokerTec 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, BrokerTec must comply with the request.

*Reporting: operating status of market*

- 6. BrokerTec must, within 7 days, notify ASIC in writing if it ceases to operate the exempt market in this jurisdiction.
- 7. Maintain regulatory approval by the Financial Conduct Authority (FCA) of the

United Kingdom (UK) and report certain changes:

- (a) BrokerTec must maintain the approval by the FCA for BrokerTec to operate as a 'Multilateral Trading Facility' (MTF) in the UK.
- (b) BrokerTec must notify ASIC, as soon as practicable and in writing, of the details of:
  - (i) the termination of, or any significant change to the approval by the FCA for BrokerTec to operate as an MTF; or
  - (ii) BrokerTec's regulatory status in the UK; and
- (c) any enforcement or disciplinary action taken against BrokerTec by the FCA or any other overseas regulatory authority.

### **Interpretation**

8. In this exemption:

- (a) italicised headings do not form part of this exemption;
- (b) *application for exemption* means the application dated 11 October 2015 (including any supplementary correspondence provided by BrokerTec 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 BrokerTec.

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

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

- (a) foreign exchange derivatives that are forwards, non-deliverable forwards, swaps, non-deliverable forward swaps and options
- (b) financial products mentioned in paragraph 764A(1)(ba) of the Act that are money market products
- (c) rights that include an undertaking by a body to repay as a debt money deposited with or lent to the body that are term deposits and certificates of deposit
- (d) tri-party repurchase agreements



*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.

*FCA* means the Financial Conduct Authority of the United Kingdom and, for the avoidance of doubt, includes the Financial Services Authority of the United Kingdom as it was previously known before 1 April 2013.

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

*FSM Act* means the *Financial Services and Markets Act 2000* of the United Kingdom.

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

*BrokerTec* means BrokerTec Europe Limited, a company incorporated and existing under the laws of the United Kingdom.