



Corporations (LMAX Limited) Exemption Notice 2016

Corporations Act 2001

I, Oliver Harvey, Senior Executive Leader,
Australian Securities and Investments Commission make this notice under section
791C of the *Corporations Act 2001* (the **Act**).

Dated 19 July 2016

Signed aw

as a delegate of the Minister under s1101J of the Act

Name of exemption

1. This exemption is the *Corporations (LMAX Limited) Exemption Notice 2016*.

Commencement

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

Exemption

3. Each exempt market operated by LMAX 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 an exempt market is limited to a dealing in an eligible financial product.

Trading on the market: market operator

- (b) LMAX only participates in an exempt market by dealing in financial products:
 - (i) on its own behalf; or
 - (ii) on behalf of a person who is a professional investor.

Trading on the market: participant

- (c) LMAX ensures that a person carrying on business in this jurisdiction does not directly participate in an 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 LMAX nor an associate of LMAX operates a clearing and settlement facility in relation to an exempt market.

Note: For the avoidance of doubt, paragraph (d) does not prohibit LMAX or an associate from providing information about, or establishing procedures dealing with, the settlement of transactions effected through an exempt market.

Cooperation with ASIC

- (e) LMAX 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) LMAX 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 each exempt market.

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

Submission to Australian jurisdiction

- (g) LMAX satisfies all of the following:
- (i) LMAX has a current permission given by the Financial Conduct Authority (FCA) under Part IV of the UK *Financial Services and Markets Act 2000* (FSM Act) and has provided ASIC with a copy of that permission;
 - (ii) LMAX has an agent at the time LMAX 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) LMAX has provided ASIC, and ASIC is satisfied with, a deed of LMAX for the benefit of and enforceable by ASIC and the other persons referred to in subsection 659B(1) of the Act, which provides that:
 - (I) the deed is irrevocable except with the prior written consent of ASIC;
 - (II) LMAX 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) LMAX 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 the exempt markets in this jurisdiction;
- (IV) LMAX 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 LMAX.

Conditions

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

Operation of the markets

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

Conduct

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

Resources

- (c) LMAX must have available adequate resources (including financial, technological and human resources) to provide the financial services in connection with the operation of the exempt markets and to carry out supervisory arrangements.

Managing conflicts of interest

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

Reporting: adverse findings

- (e) If LMAX becomes aware that LMAX or a director or secretary of LMAX is covered by one or more of the following matters, LMAX 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 LMAX takes disciplinary action against an Australian participant, LMAX must, as soon as practicable, give a written notice to ASIC that includes the following details:
 - (i) the participant's name and the name of the relevant exempt market;
 - (ii) the reason for and nature of the action taken; and
 - (iii) when the action was taken.

Reporting: suspected contraventions by participant

- (g) If LMAX 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 LMAX in relation to an exempt market, LMAX must, as soon as practicable, give a written notice to ASIC that includes the following details:
 - (i) the participant's name and the name of the relevant exempt market;
 - (ii) details of the contravention or impending contravention; and
 - (iii) LMAX's reason for that belief.

Assistance to ASIC

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

Record-keeping

- (i) LMAX must have adequate arrangements in place for the recording of order information and transactions effected through the exempt markets.
- (j) LMAX must keep for a period of at least 5 years the records of order information and transactions effected through the exempt markets.

Annual report

- (k) LMAX must, within three months after the end of its financial year, give ASIC an annual report for each exempt market that sets out:
 - (i) the extent to which LMAX has complied with this exemption; and
 - (ii) the following information:
 - (A) a description of the activities that LMAX 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;
 - (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;
 - (iii) the names and number of Australian participants during the financial year, identifying those Australian participants who, as at the last day of the financial year, remained Australian participants;

- (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 LMAX by Australian participants during the financial year, and the action taken by LMAX in response to each complaint;
- (vi) any specific regulatory issues in relation to the exempt market operated by LMAX in this jurisdiction or a financial market operated by LMAX outside this jurisdiction, that LMAX encountered during the financial year and actions taken to resolve those issues;
- (vii) details of any significant conflicts of interest identified by LMAX 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 LMAX 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, LMAX must comply with the request.

Reporting: operating status of market

- 6. LMAX must, within 7 days, notify ASIC in writing if it ceases to operate an exempt market in this jurisdiction.

Maintain regulatory approval by the FCA of the United Kingdom and report certain changes

- 7. LMAX must:
 - (a) maintain the approval by the FCA for LMAX to operate a multilateral trading facility (MTF) in the UK;
 - (b) 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 LMAX to operate a MTF; or
 - (ii) any change to LMAX's regulatory status in the UK; or
 - (iii) any enforcement or disciplinary action taken against LMAX 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 10 May 2016 (including any supplementary correspondence provided by LMAX to ASIC before this exemption is made) for an exemption from the operation of Part 7.2 of the Act of the financial markets operated by LMAX.

Australian participant means a participant of an exempt market that carries on business in this jurisdiction.

eligible financial product means a financial product that is a financial product mentioned in paragraph 764A(1)(k) of the Act.

exempt market means any of the facilities that operate in this jurisdiction (currently known as LMAX Exchange Service and LMAX InterBank Service) 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.

LMAX means LMAX Limited, a company incorporated in England and Wales, with registered number 6505809.