



Corporations (OTCX Trading Limited) Exemption Notice 2016

Corporations Act 2001

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

Dated ..*21 September*.. 2016

Signed ..*OH*.....

as a delegate of the Minister under s1101J of the Act

Name of exemption

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

Commencement

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

Exemption

3. The exempt market operated by OTCX Trading Limited in this jurisdiction is exempt from the operation of Part 7.2 of the Act.

Period of exemption

4. This exemption ceases to apply on 1 July 2019.

Where this exemption applies

5. This exemption applies where all of the following matters in this paragraph 5 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) OTCX Trading Limited 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) OTCX Trading Limited 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 OTCX Trading Limited nor an associate of OTCX Trading Limited operates a clearing and settlement facility in relation to the exempt market.

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

Cooperation with ASIC

- (e) OTCX Trading Limited 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) OTCX Trading Limited 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 OTCX Trading Limited from the requirement to hold an Australian financial services licence.

Submission to Australian jurisdiction

- (g) OTCX Trading Limited satisfies all of the following:
 - (i) OTCX Trading Limited has an agent at the time OTCX Trading Limited 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;
 - (ii) OTCX Trading Limited has provided ASIC, to the satisfaction of ASIC, with a deed of OTCX Trading Limited for the benefit 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) OTCX Trading Limited 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) OTCX Trading Limited 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 and the operation of this market in this jurisdiction.

Conditions

6. This exemption ceases to apply if OTCX Trading Limited fails to take reasonable steps to comply with any of the matters set out in this paragraph 6.

Operation of the market

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

Conduct

- (b) OTCX Trading Limited must, to the extent that it is reasonably practicable to do so, do all things necessary to ensure that the exempt market is a fair, orderly and transparent market.

Resources

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

Reporting: adverse findings

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

Assistance to ASIC

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

Record-keeping

- (i) OTCX Trading Limited must have adequate arrangements in place for the recording of quotation information and transactions effected through the exempt market.
- (j) OTCX Trading Limited must keep for a period of at least 5 years the records of quotation information and transactions effected through the exempt market.

Annual report

- (k) OTCX Trading Limited must, within three months after the end of its financial year, give ASIC an annual report that sets out:
 - (i) the extent to which OTCX Trading Limited has complied with this exemption;
 - (ii) a description of the activities that OTCX Trading Limited undertook in the financial year in relation to the operation of the exempt market;
 - (iii) the names 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, and by all participants, throughout the financial year;
 - (v) the number and nature of significant complaints made to OTCX Trading Limited by Australian participants who participated in the exempt market during the financial year, and the action taken by OTCX Trading Limited in response to each complaint;
 - (vi) any specific regulatory issues in relation to the exempt market operated by OTCX Trading Limited in this jurisdiction or the services provided by OTCX Trading Limited outside this jurisdiction, that OTCX Trading Limited encountered during the financial year and actions taken to resolve those issues; and
 - (vii) details of any significant conflicts of interest identified by OTCX Trading Limited in relation to its operation of the exempt market during the financial year, and how each conflict of interest was managed.

Audit report

- (1) If the Minister in writing requests OTCX Trading Limited 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, OTCX Trading Limited must comply with the request.

Reporting: operating status of market

7. OTCX Trading Limited must, within 7 days, notify ASIC in writing if it ceases to operate the exempt market in this jurisdiction.

Interpretation

8. In this exemption:
- (a) italicised headings do not form part of this exemption;
- (b) ***application for exemption*** means the application dated 13 July 2016 (including any supplementary correspondence provided by OTCX Trading Limited to ASIC) for an exemption from the operation of Part 7.2 of the Act of the financial market operated by OTCX Trading Limited.

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

cross-market combination means a transaction consisting of:

- (a) one or more component transactions in derivatives that are not traded on a retail financial market;
- (b) one or more component transactions in derivatives that are traded on a retail financial market; and
- (c) in respect of which:
- (i) entry into each component transaction is contingent on entry into each of the other component transactions in a specific ratio; and
- (ii) the parties to each component transaction are the same.

eligible financial product:

- (a) in relation to a cross-market combination means:

- (i) interest rate derivatives, including cross-currency interest rate swaps, other than those which are traded on a retail financial market;
 - (ii) equity derivatives other than those which are traded on a retail financial market; or
 - (iii) derivatives that are traded on a retail financial market; and
- (b) in relation to any other transaction means:
- (i) equity derivatives other than those which are traded on a retail financial market; or
 - (ii) interest rate derivatives, including cross-currency interest rate swaps, other than those which are traded on a retail financial market.

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.

OTCX Trading Limited means OTCX Trading Limited, a corporation formed under the law of the United Kingdom.

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

retail financial market means a financial market whose operator is licensed under subsection 795B(1) of the Act and whose licence is not subject to a condition restricting direct participation in the financial market to professional investors and, or, wholesale clients.