Corporations (MarketAxess Europe 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 14 October 2016

Signed ...........................................

as a delegate of the Minister under s1101J of the Act
Name of exemption

1. This exemption is the Corporations (MarketAxess Europe 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 MarketAxess Europe 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) MarketAxess Europe only participates in the 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) MarketAxess Europe 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 MarketAxess Europe nor an associate of MarketAxess Europe operates a clearing and settlement facility in relation to the exempt market.

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

Submission to Australian jurisdiction

(g) MarketAxess Europe satisfies all of the following:

(i) MarketAxess Europe 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) MarketAxess Europe has an agent at the time MarketAxess Europe 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) MarketAxess Europe has provided ASIC, and ASIC is satisfied with, a deed of MarketAxess Europe 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) MarketAxess Europe 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) MarketAxess Europe 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 market in this jurisdiction;

(IV) MarketAxess Europe 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 MarketAxess Europe.

Conditions

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

Operation of the market

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

Conduct

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

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

Reporting: securities transactions

(e) At the end of each 12 month period commencing on the date this exemption commences, MarketAxess Europe must:

(i) identify each financial product (relevant financial product) that was traded on the exempt market that was also able to be traded on a financial market licensed under subsection 795B(1) of the Act;

(ii) identify the number of transactions in relevant financial products on the exempt market during the 12 month period;

(iii) notify ASIC in writing if the number of transactions calculated as required by subparagraph (ii) exceeds 2000;

(f) If MarketAccess Europe is required to give the notification referred to in subparagraph (e)(iii), the notification must be given within two weeks of the end of each 12 month period.

Reporting: adverse findings

(g) If MarketAxess Europe becomes aware that MarketAxess Europe or a director or secretary of MarketAxess Europe is covered by one or more of the following matters, MarketAxess Europe 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

(h) If MarketAxess Europe takes disciplinary action against an Australian participant, MarketAxess Europe 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; and

(iii) when the action was taken.

Reporting: suspected contraventions by participant

(i) If MarketAxess Europe 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 MarketAxess Europe in relation to the exempt market, MarketAxess Europe must, as soon as practicable, give a written notice to ASIC that includes the following details:

(i) the participant’s name;

(ii) details of the contravention or impending contravention; and

(iii) MarketAxess Europe's reason for that belief.

Assistance to ASIC

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

(k) MarketAxess Europe must have adequate arrangements in place for the recording of order information and transactions effected through the exempt market.

(l) MarketAxess Europe must keep for a period of at least 5 years the records of order information and transactions effected through the exempt market.

Annual report

(m) MarketAxess Europe must, within three months after the end of its financial year, give ASIC an annual report that sets out:

(i) the extent to which MarketAxess Europe has complied with this exemption; and

(ii) the following information:

   (A) a description of the activities that MarketAxess Europe 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 MarketAxess Europe by Australian participants during the financial
year, and the action taken by MarketAxess Europe in response to each complaint;

(vi) any specific regulatory issues in relation to the exempt market operated by MarketAxess Europe in this jurisdiction or a financial market operated by MarketAxess Europe outside this jurisdiction, that MarketAxess Europe encountered during the financial year and actions taken to resolve those issues;

(vii) details of any significant conflicts of interest identified by MarketAxess Europe in relation to its operation of the exempt market during the financial year, and how each conflict of interest was managed.

Audit report

(n) If the Minister in writing requests MarketAxess Europe 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 (m) or on any information or statements accompanying the annual report, MarketAxess Europe must comply with the request.

Reporting: operating status of market

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

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

8. MarketAxess Europe must:

(a) maintain the approval by the Financial Conduct Authority for MarketAxess Europe to operate as 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 MarketAxess Europe to operate as an MTF; or

(ii) any change to MarketAxess Europe's regulatory status in the UK; or

(iii) any enforcement or disciplinary action taken against MarketAxess Europe by the FCA or any other overseas regulatory authority.
Interpretation

9. In this exemption:

(a) italicised headings do not form part of this exemption;

(b) application for exemption means the application dated 9 December 2015 (including any supplementary correspondence provided by MarketAxess Europe 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 MarketAxess Europe.

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

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

(a) securities;

(b) corporate or government bonds; and

(c) credit derivatives that are credit default swaps.

exempt market means the facility that operates in this jurisdiction 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.

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

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