



Corporations (ICAP Energy AS) Exemption Notice 2017

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 7 March 2017

Signed 

as a delegate of the Minister under s1101J of the Act

Name of exemption

1. This exemption is the *Corporations (ICAP Energy AS) Exemption Notice 2017*.

Commencement

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

Exemption

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

Trading on the market: market operator

- (b) ICAP does not trade on the exempt market on its own behalf or on behalf of another investor.

Trading on the market: participant

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

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

Submission to Australian jurisdiction

- (g) ICAP satisfies all of the following:
- (i) ICAP has a current permission given by Finanstilsynet, the Financial Supervisory Authority of Norway, under the *Securities Trading Act* to provide financial services and has provided ASIC with a copy of that permission;
 - (ii) Pursuant to article 32 of the Markets in Financial Instruments Directives "MiFID", ICAP branch offices are also authorised by and registered with
 - a. The Netherlands Authority for the Financial Markets "AFM"
 - b. Spain's Comision Nacional, Del Mercado de Valores "CNMV"
 - (iii) ICAP has an agent at the time ICAP 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) ICAP has provided ASIC, and ASIC is satisfied with, a deed of ICAP 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) ICAP 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) ICAP 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) ICAP covenants that, on written request of either the Finanstilsynet or ASIC, it will give or vary written consent and take all other practicable steps to enable and assist the Finanstilsynet to disclose to ASIC and ASIC to disclose to the Finanstilsynet any information or document that the Finanstilsynet or ASIC has that relates to ICAP.

Conditions

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

Operation of the market

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

Conduct

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

Reporting: adverse findings

- (e) If ICAP becomes aware that ICAP or a director or secretary of ICAP is covered by one or more of the following matters, ICAP 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 ICAP takes disciplinary action against an Australian participant, ICAP 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

- (g) If ICAP 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 ICAP in relation to the exempt market, ICAP 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) ICAP's reason for that belief.

Assistance to ASIC

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

Record-keeping

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

Annual report

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

Reporting: operating status of market

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

Maintain regulatory approval by the Finanstilsynet of Norway and report certain changes

- 8. ICAP must:
 - (a) maintain the approval by the Finanstilsynet for ICAP to provide its financial services in Norway;
 - (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 Finanstilsynet for ICAP to provide its financial services; or
 - (ii) any change to ICAP's regulatory status in Norway; or

- (iii) any enforcement or disciplinary action taken against ICAP by the Finanstilsynet 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 1 December 2016 (including any supplementary correspondence provided by ICAP 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 ICAP.

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

eligible financial product means European electricity derivatives where:

- (a) European electricity derivatives means financial instruments as defined in Section C of MiFID I Directive 2004/39/EC of the European Parliament and of the Council, based on electricity markets in Continental, Central and Eastern European and Nordic region.

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.

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

Finanstilsynet means The Financial Supervisory Authority of Norway

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

ICAP means ICAP Energy AS, a company registered in Norway, with organisation number 971 072 032.