

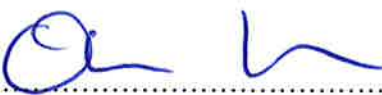


Corporations (SwapEx, LLC) Exemption Notice 2017

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 29 March 2017

Signed 

as a delegate of the Minister under s1101J of the Act

Name of exemption

1. This exemption is the *Corporations (SwapEx, LLC) Exemption Notice 2017*.

Commencement

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

Exemption

3. The exempt market operated by SwapEx 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) SwapEx does not trade on the exempt market on its own behalf or on behalf of another investor.

Trading on the market: participant

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

Note: For the avoidance of doubt, paragraph (d) does not prohibit SwapEx 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) SwapEx 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) SwapEx is exempt from holding an Australian financial service license for financial services provided in this jurisdiction in connection with the operation of the exempt market.

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

Submission to Australian jurisdiction

- (g) SwapEx satisfies all of the following:
 - (i) SwapEx is registered as a swap execution facility pursuant to the CFTC regulations;
 - (ii) SwapEx has an agent at the time SwapEx 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) SwapEx has provided ASIC, and ASIC is satisfied with, a deed of SwapEx 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) SwapEx 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) SwapEx 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) SwapEx covenants that, on written request of either the CFTC or ASIC, it will give or vary written consent and take all other practicable steps to enable and assist the CFTC to disclose to ASIC and ASIC to disclose to the CFTC any information or document that the CFTC or ASIC has that relates to SwapEx.

Conditions

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

Operation of the market

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

Conduct

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

Reporting: adverse findings

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

Assistance to ASIC

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

Record-keeping

- (i) SwapEx must have adequate arrangements in place for the recording of order information and transactions effected through the exempt market.
- (j) SwapEx 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) SwapEx 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 SwapEx has complied with this exemption; and
 - (ii) the following information:
 - (A) a description of the activities that SwapEx 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, and by all participants, throughout the financial year;
 - (v) the number and nature of significant complaints made to SwapEx by Australian participants during the financial year, and the action taken by SwapEx in response to each complaint;

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

Reporting: operating status of market

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

Maintain regulatory approval by the CFTC and report certain changes

- 8. SwapEx must:
 - (a) maintain its registration with the CFTC as a SEF;
 - (b) notify ASIC, as soon as practicable and in writing, of:
 - (i) the termination of, or any significant change to its registration as a SEF by the CFTC; or
 - (ii) any change to SwapEx's regulatory status in the US; or
 - (iii) any enforcement or disciplinary action taken against SwapEx by the CFTC 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 24 March 2017 (including any supplementary correspondence provided by SwapEx to

ASIC before this exemption is made) for an exemption from the operation of Part 7.2 of the Act of the SEF operated by SwapEx.

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

CFTC means the Commodity Futures Trading Commission of the United States of America.

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

- (a) foreign exchange derivatives that are non-deliverable forwards;

that are typically entered into under the ISDA Master Agreement or another master agreement commonly used by counterparties for that purpose.

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.

ISDA Master Agreement means a master agreement issued by the International Swaps and Derivatives Association, Inc.

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

SwapEx means SwapEx, LLC, a limited liability company registered in Delaware, United States of America, with file number 5111336.