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## Corporations (ICAP Securities Limited) Exemption Notice 2010

*Corporations Act 2001*

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I, CHRIS BOWEN, Minister for Financial Services, Superannuation and Corporate Law, issue this Notice under section 791C of the *Corporations Act 2001*.

Dated 6 May 2010

Minister for Financial Services, Superannuation and Corporate Law

### 1. Name of Notice

This Notice is the *Corporations (ICAP Securities Limited) Exemption Notice 2010*.

### 2. Commencement

This Notice commences on the day it is notified in the *Gazette*.

### 3. Definitions

In this Notice:

**Act** means the *Corporations Act 2001*.

**Application** means the application for an exemption from the operation of Part 7.2 of the Act, submitted to ASIC by ISL, dated 25 June 2009, and subsequent correspondence prior to the issuing of this notice and relating to the application.

**ASIC** means the Australian Securities and Investments Commission.

**Australian participant** means a person in Australia who is a participant.

**Class Order [Co 03/1099]** means ASIC Class Order [CO 03/1099], titled 'UK FSA regulated financial service providers', as in force from time to time.

**clearing and settlement facility** has the same meaning as in Chapter 7 of the Act.

**derivative** has the same meaning as in Chapter 7 of the Act.

**financial year** means ISL's financial year.

**ISL** means ICAP Securities Limited.

**Market** means the financial market for credit derivatives that is operated by ISL.

**participant** has the same meaning as in Chapter 7 of the Act.

**professional investor** has the meaning given by section 9 of the Act.

**UK FSA** means the Financial Services Authority of the United Kingdom.

#### **4. Exemption**

For section 791C of the Act, and subject to the conditions mentioned in sections 5 to 17 of this Notice, the Market is exempt from the operation of Part 7.2 of the Act.

#### **5. Operation of the Market**

- (1) ISL must operate the Market in all essential ways as set out in the Application.
- (2) ISL, or an associate of ISL:
  - (a) must not operate a clearing and settlement facility for the Market; and
  - (b) may provide clearing and settlement arrangements for the Market only by providing information or by establishing procedures for the settlement of transactions effected through the Market.

#### **6. Licensing of ISL**

ISL must, at all times, comply with Class Order [CO 03/1099].

**7. Participants who may trade on the Market**

- (1) ISL must not admit an Australian participant to the Market, or allow an Australian participant to enter into a trade on the Market, unless the Australian participant is a professional investor who is trading on its own behalf or on behalf of another professional investor.
- (2) ISL must not trade on the Market on its own behalf or on behalf of another investor.

**8. Financial products that may be traded on the Market**

Only credit derivatives are permitted to be traded on the Market.

**9. Arrangements to manage conflicts of interest**

- (1) ISL must establish and maintain arrangements to manage any conflicts of interest about activities undertaken by ISL in the operation of the Market.
- (2) The arrangements must be to the satisfaction of ASIC.

**10. Arrangements to record order information and transactions**

- (1) ISL must ensure that satisfactory arrangements are made for recording order information and transactions effected through the Market.
- (2) To comply with the condition set forth in paragraph (1), the records must be kept in sufficient detail to show particulars of:
  - (a) the date and time that an order was received;
  - (b) the identity of the participant placing the order;
  - (c) the name and quantity of the financial product to which the order applies;
  - (d) the designation of the order as a buy or sell order;
  - (e) any limit or stop price prescribed by the order;
  - (f) the date and time at which the order expires;
  - (g) details of any modification or cancellation of the order;
  - (h) the price, quantity, date and time of the execution of the order; and

- (i) the identities of the counterparties to the transaction.
- (3) The records must be kept and be available to ASIC for at least 5 years.

**11. Annual report**

- (1) Within three months of the end of each financial year, ISL must give a report to ASIC that sets out the extent to which ISL has complied with the conditions in this Notice during that financial year.
- (2) The report must include the following information:
  - (a) a description of the activities that ISL has undertaken in the financial year in relation to the operation of the Market;
  - (b) if any material system outages occurred during the financial year that prevented Australian participants from using the 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.
  - (c) the names and number of Australian participants that were authorised to access the Market throughout the reporting period, identifying those still authorised to access the Market on the last day of the financial year;
  - (d) details of the volume of trading on the Market by Australian participants throughout the financial year;
  - (e) the number and nature of significant complaints made to ISL by Australian participants who used the Market during the financial year, and the action taken by ISL in response to each complaint;
  - (f) any specific regulatory issues that ISL encountered during the financial year and actions taken to resolve those issues (whether inside or outside Australia); and
  - (g) details of any significant conflict of interest identified by ISL in relation to its operation of the Market during the financial year, and how each conflict of interest was resolved.

**12. Minister may require ISL to submit to an audit**

- (1) The Minister may, by written notice, require ISL to obtain an audit report about:
  - (a) the annual report mentioned in section 11; and
  - (b) any information or statements accompanying the annual report.
- (2) The Minister may nominate either of the following to undertake the audit:
  - (a) ASIC; or
  - (b) another person or body that is suitably qualified.

**13. Reporting of certain events involving an Australian participant**

- (1) If ISL takes any disciplinary action against an Australian participant of the Market, ISL must, as soon as practicable, advise ASIC in writing of:
  - (a) the participant's name;
  - (b) the reason for and nature of the action taken; and
  - (c) when the action was taken.
- (2) If ISL 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 ISL in relation to the Market, ISL must, as soon as practicable, advise ASIC in writing of:
  - (a) the Australian participant's name; and
  - (b) details of the contravention or impending contravention; and
  - (c) ISL's reason for that belief.

**14. Reporting of certain events involving ISL or a director or secretary of ISL**

- (1) If ISL becomes aware that ISL, or a director or secretary of ISL:
  - (a) is the subject of a declaration of contravention in relation to a provision of the Act; or
  - (b) has been convicted of an offence under the Act; or

- (c) has been disqualified from managing a corporation; or
  - (d) has been banned from providing financial services;
- (2) ISL must advise ASIC of the matter, in writing, within seven days after ISL becomes aware of the matter.

**15. Notice if ISL ceases to operate the Market**

ISL must, within seven days, advise ASIC in writing if it ceases to operate the Market in Australia.

**16. Requirement to assist ASIC**

If ISL receives a reasonable request from ASIC to give assistance to ASIC, or a person authorised by ASIC, about the performance of ASICs functions in relation to the operation of the Market, ISL must:

- (a) provide the assistance; and
- (b) give ASIC access to any information, document and books held by ISL.

**17. Requirement to enter into written arrangement with ASIC**

ISL must enter into a written arrangement with ASIC for cooperation with ASIC in matters about this Notice.