

Financial Markets Conduct (ICAP Brokers Pty Limited and ICAP New Zealand Limited) Exemption Notice 2015

Pursuant to section 556 of the Financial Markets Conduct Act 2013, the Financial Markets Authority, being satisfied of the matters set out in section 557 of that Act, gives the following notice.

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Notice

1 Title

This notice is the Financial Markets Conduct (ICAP Brokers Pty Limited and ICAP New Zealand Limited) Exemption Notice 2015.

2 Commencement

This notice comes into force on 1 December 2015.

3 Revocation

This notice is revoked on 30 November 2020.

4 Interpretation

(1) In this notice, unless the context otherwise requires,—

Act means the Financial Markets Conduct Act 2013

financial product market means a financial product market (as defined in section 309 of the Act) that is operated in New Zealand

Regulations means the Financial Markets Conduct Regulations 2014

ICAP means ICAP Brokers Pty Limited and ICAP New Zealand Limited.

(2) Any term or expression that is defined in the Act or the Regulations and used, but not defined, in this notice has the same meaning as in the Act or the Regulations.

5 Exemption from section 310 of the Act

ICAP is exempted from section 310 of the Act.

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6 Conditions of exemption in clause 5

The exemption in clause 5 is subject to the following conditions:—

- (a) ICAP does not receive or hold client money or client property or operate any clearing and settlement facility in connection with its operation of any financial product market;
- (b) each participant in any financial product market operated by ICAP is an entity that is a wholesale investor (as defined in clause 3 of schedule 1 of the Act) acting on its own behalf as principal;
- (c) ICAP does not trade on its own behalf or as agent on behalf of others on any financial product market it operates;
- (d) any financial product market operated by ICAP relates only to one or more of the following financial products:
 - (i) derivatives between participants in ICAP's financial product market;
 - (ii) debt securities issued by registered banks;
 - (iii) New Zealand Government bonds; and
- (e) ICAP does not describe itself as operating a licensed financial product market or hold out that any financial product market it operates is a licensed financial product market.

Dated at Wellington this *29th* day of *October* 2015.



Garth Stanish
Director of Markets Oversight
Financial Markets Authority

Statement of reasons

This notice, which comes into force on 1 December 2015 and is revoked on 30 November 2020, exempts ICAP from section 310 of the Financial Markets Conduct Act 2013. Section 310 requires that a person must not operate, or hold out that the person operates, a financial product market in New Zealand, unless the person holds a licence to operate that market under Part 5 of the Act, or the market is exempt from the licensing requirement under section 312 of the Act.

The Financial Markets Authority (FMA), after satisfying itself of the matters set out in section 557 of the Act, considers it appropriate to grant the exemption set out in this notice for the following reasons—

- The information presented on the ICAP financial product market(s) is simple in its format, the type of product that can be traded on the financial product market(s) is limited, and the conditions of the exemption ensure that all participants in the ICAP financial product market(s) are institutional wholesale investors. Accordingly:
 - the purpose of promoting informed participation of businesses, investors and consumers in the market; and

- the additional purpose of providing timely, accurate and understandable information to persons to assist those persons to make decisions relating to financial products or the provision of financial services,

are substantially achieved without ICAP being subject to licensing requirements; and

- ICAP will not hold investor money or property in relation to any financial product market it operates and will not be a participant in any of the transactions that take place on any financial product market it operates. As such, it is not necessary to impose requirements in relation to those matters to achieve the purpose of the Act relating to governance arrangements and the management of governance risks; and
- given that the statutory purposes described above are substantially met without ICAP being subject to licensing requirements, it is desirable to grant the exemption in order to promote the further statutory purpose of avoiding unnecessary compliance costs.

Furthermore, taking into consideration:

- the matters set out in section 308 regarding the nature of the activities conducted, the size of the market, the nature of the financial products dealt with, the participants, and the technology used; and
- the purpose set out in section 229 to encourage a diversity of financial product markets that take account of the differing needs and objectives of issuers and investors,

the obligations arising out of the operation of subparts 7 and 8 of Part 5 of the Act are out of proportion to any benefits licensing ICAP may bring. From a regulatory perspective, the needs and objectives of the particular investors in relation to the particular products appear to be largely met by the existing arrangements. Also, to subject the issuers whose products are traded on ICAP's financial product market(s) to listing rules and requirements would impose significant costs on both ICAP and the issuers disproportionate to any benefit.

The exemption is subject to conditions limiting the nature of participant, the capacity in which they are participating, and the range of products traded on any facility that has the benefit of the exemption. As such, the FMA considers the exemption is not broader than reasonably necessary to address the matters that gave rise to the exemption.

