



Corporations (SwapAgent Limited) CS Facility Exemption Notice 2021

Corporations Act 2001

I, Nathan Bourne, delegate of the Minister, make this notice under section 820C of the *Corporations Act 2001* (the **Act**).

Dated 28th January 2022

Signed

Senior Executive Leader, Australian Securities and Investments Commission

Name of exemption

1. This exemption is the *Corporations (SwapAgent Limited) CS Facility Exemption Notice 2021*.

Commencement

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

Exemption

3. The SwapAgent Facility operated by SwapAgent in this jurisdiction is exempt from the operation of Part 7.3 of the Act.

Where this exemption applies

4. This exemption applies where all of the following are satisfied:

Financial products

- (a) The SwapAgent Facility operated by SwapAgent in this jurisdiction provides services in respect of eligible financial products only.

Cooperation with ASIC

- (b) SwapAgent 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, and that arrangement has not been terminated.

Cooperation with the Reserve Bank of Australia

- (c) SwapAgent has entered into a written arrangement with the Reserve Bank of Australia for cooperation with the Reserve Bank of Australia in relation to this exemption and the subject matter to which this exemption relates, and that arrangement has not been terminated.

Submission to Australian jurisdiction

- (d) SwapAgent has provided ASIC, and ASIC is satisfied with, a deed of SwapAgent 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) SwapAgent 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; and
 - (iii) SwapAgent 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 SwapAgent Facility in this jurisdiction.
- (e) SwapAgent has appointed an agent in Australia to receive service of process for any proceedings in connection with the deed referred to in paragraph 4(d), at the time SwapAgent first purports to rely on this exemption, and, from that time, has not failed to have an agent appointed for that purpose for any consecutive period of not less than 10 business days.

Operation of the SwapAgent Facility in this jurisdiction

- (f) SwapAgent operates the SwapAgent Facility in this jurisdiction in all material respects in the way set out in the application for exemption.
- (g) Without limiting the condition in paragraph 4(f), the SwapAgent Facility operated by SwapAgent in this jurisdiction does not constitute, arrange, participate in or provide for any multilateral netting arrangement.

Regulatory Status

- (h) The SwapAgent Facility is not regulated as a clearing and settlement facility or financial service, or equivalent type of facility or service, in the United Kingdom.

Business continuity arrangements

- (i) SwapAgent maintains appropriate business continuity arrangements including, without limitation:
 - (i) SwapAgent requires participants to maintain and test back-up settlement arrangements for transactions involving Australian participants; and

- (ii) SwapAgent maintains back-up AUD payment arrangements that are adequate having regard to the volume of payments in Australian dollars facilitated by the SwapAgent Facility.

Conduct

- (j) SwapAgent, to the extent that it is reasonably practicable to do so, does all things necessary to ensure that the SwapAgent Facility's services are provided in a fair and effective way.

Resources

- (k) SwapAgent has sufficient resources (including financial, technological and human resources) to operate the SwapAgent Facility properly.

Managing conflicts of interest

- (l) SwapAgent has adequate arrangements for handling conflicts between the commercial interests of SwapAgent and the need for SwapAgent to ensure that the SwapAgent Facility's services are provided in a fair and effective way.

Record-keeping

- (m) SwapAgent has adequate arrangements in place for the recording of information related to the operation of the SwapAgent Facility including, without limitation, registered transactions, payments calculated and processed, and operational data.
- (n) SwapAgent keeps the records referred to in paragraph 4(m) for a period of 5 years.

Interpretation

5. In this exemption:

- (a) italicised headings do not form part of this exemption;
- (b) ***application for exemption*** means the application dated 9 April 2021 (including any supplementary correspondence provided by SwapAgent to ASIC before this exemption is made) for an exemption from the operation of Part 7.3 of the Act.

Australian participant means a participant incorporated in Australia.

back-up AUD payment arrangements means alternative arrangements for facilitating payments in Australian dollars between SwapAgent and participants in the SwapAgent Facility, to be relied upon in the event the usual payment provider is unable to facilitate those payments.

back-up settlement arrangements means alternative arrangements for participants to meet their obligations to each other in relation to transactions registered with the SwapAgent Facility, to be relied upon in the event participants are unable to use the SwapAgent Facility for meeting those obligations.

clearing and settlement facility has the meaning given by section 768A of the Act.

derivative has the meaning given by section 761D of the Act.

eligible financial products means:

- (i) over-the-counter interest rate derivatives;
- (ii) over-the-counter inflation rate derivatives; and
- (iii) over-the-counter foreign exchange derivatives;

that are entered into under an ISDA Master Agreement or under another agreement commonly used to deem an ISDA Master Agreement to be in place between the counterparties.

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

foreign exchange derivatives means derivatives where the amount of consideration or the value of the arrangement is ultimately determined, derives from or varies by reference to the value of a foreign exchange rate.

inflation rate derivatives means derivatives where the amount of consideration or the value of the arrangement is ultimately determined, derives from or varies by reference to the value of an inflation rate.

interest rate derivatives means derivatives where the amount of consideration or the value of the arrangement is ultimately determined, derives from or varies by reference to the value of an interest rate.

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

multilateral netting arrangement has the meaning given by section 5 of the *Payment Systems and Netting Act 1998* as in force at the commencement of this exemption.

participant means a person who is allowed to directly participate in the SwapAgent Facility.

SwapAgent means SwapAgent Limited, a company registered under the English Companies Act, CRN: 10430326 of Aldgate House, 33 Aldgate High Street, London EC3N 1EA, United Kingdom.

SwapAgent Facility means the clearing and settlement facility operated by SwapAgent in accordance with SwapAgent's operating rules and associated procedures, each as amended or replaced from time to time.