



Australian Market Licence (FEX Global Pty Ltd) 2013

Corporations Act 2001

I, WILLIAM RICHARD SHORTEN, Minister for Financial Services & Superannuation and Minister for Employment & Workplace Relations, grant this Licence under subsection 795B(1) of the Corporations Act 2001.

Dated 4 April 2013

Minister for Financial Services & Superannuation and Minister for Employment & Workplace Relations

1. Name of Licence

This Licence is the *Australian Market Licence (FEX Global Pty Ltd) 2013*.

2. Commencement

This Licence commences when it is granted.

3. Definitions

In this Notice:

Act means *Corporations Act 2001*.

ASIC means Australian Securities and Investments Commission.

Australian ADI has the meaning given by section 9 of the Act.

cash means current assets valued at the amount of cash for which they can be expected to be exchanged within five business days.

cash flow means FEX's own cash flow.

cash flow positive means cash flow greater than zero.

clearing entity means an entity that has the right, under the FEX operating rules, to undertake clearing and settlement in respect of transactions executed on the market.

CS facility licensee has the meaning given by section 761A of the Act.

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

Division 3 arrangements has the meaning given by section 880B of the Act.

eligible financial provider means an Australian ADI or an entity that is approved for the purposes of sections 8 and 9 by ASIC in writing and that is:

- (a) a foreign deposit-taking institution; or
- (b) an entity of undoubted financial substance.

energy 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 any of the following:

- (a) coal;
- (b) crude oil;
- (c) electricity; and
- (d) natural gas.

environmental compliance scheme means arrangements relating to meeting some or all of a person's obligations about the generation of renewable energy or the emission of particular gases into the atmosphere.

environmental 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 instrument, right or obligation in or arising from an environmental compliance scheme:

- (a) of the Commonwealth or of any State or of the Australian Capital Territory or of the Northern Territory or of Norfolk Island; or
- (e) that the Commonwealth or any State or the Australian Capital Territory or of the Northern Territory or of Norfolk Island is a party to or participates in; or
- (c) of any foreign state that may have been established to meet or assist in meeting the obligations that the foreign state may have under the United Nations Framework Convention on Climate Change done at New York on 9 May 1992, amended and in force from time to time, including any protocol to that convention, for example the Kyoto Protocol.

FEX means FEX Global Pty Ltd (ACN 124 127 224).

fidelity fund has the meaning given by section 880B of the Act.

LCH means LCH.Clearnet Limited (ARBN 142 251 045).

market means the financial market FEX is authorised to operate under this Licence.

net tangible assets or NTA has the same definition as in ASIC Pro Forma 209 Australian Financial Services Licence Conditions (PF 209) as reissued by ASIC in November 2012, and terms used in that definition also have the same definition as in PF 209.

operating rules has the meaning given by section 761A of the Act.

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

procedures means any written procedures issued by FEX in respect of its operating rules.

quarter means a period of three months, ending on 31 March, 30 June, 30 September and 31 December, in each year during which the market operates.

4. Grant of Licence

This Licence is granted to FEX to operate the market through which participants may enter into trades in the financial products mentioned in section 5.

5. Classes of financial products

The classes of financial products that can be dealt with on the market are derivatives, limited to:

- (a) commodity derivatives;
- (b) energy derivatives; and
- (c) environmental derivatives.

6. Clearing and settlement arrangements

- (1) FEX must have clearing and settlement arrangements for transactions effected through the market with:
 - (a) LCH, provided that LCH is a CS facility licensee; or
 - (b) any other CS facility licensee approved for the purpose by the Minister.
- (2) FEX must take reasonable steps to ensure each participant of the market discloses, to each client of the participant located in Australia, before accepting the first order from the client to enter into a transaction on the market that will be cleared and settled by LCH, the differences between the clients' transactions being cleared and settled by LCH and an Australian-based clearing and settlement facility, including but not limited to, the following:

- (a) that LCH's principal place of business is located in the United Kingdom, and that the clearing and settlement facility is regulated primarily under the regulatory regime of the United Kingdom; and
- (b) that the rights and remedies of investors whose transactions are cleared and settled through LCH may differ from the rights and remedies of investors whose transactions are cleared and settled by an Australian-based clearing and settlement facility.

7. Compensation arrangements

- (1) The minimum amount of cover required for the Division 3 arrangements is \$1,000,000.
- (2) FEX must maintain:
 - (a) a fidelity fund; or
 - (b) an irrevocable letter of credit from an Australian ADI payable to FEX; or
 - (c) a combination of the sources referred to in paragraph (a) and (b),as the source of funds for its Division 3 arrangements.

8. Conditions which must be satisfied before FEX begins to operate the market

- (1) FEX must not commence operating the market unless all of the following are satisfied:
 - (a) the documents and information referred to in subsections (2) to (7) are given to ASIC, dated not more than 30 days before being given to ASIC;
 - (b) ASIC has confirmed to FEX in writing that all of the conditions set out in subsections (2) to (7) are satisfied; and
 - (c) 14 days have elapsed after the confirmation mentioned in paragraph (b) was given.
- (2) FEX must give to ASIC a written confirmation by a person approved by ASIC and engaged on terms and conditions acceptable to ASIC, including as to the scope of the person's work:
 - (a) of the adequacy of FEX's governance framework for testing technology systems;
 - (b) verifying that prospective participants and data vendors have attested they are operationally ready for the commencement of the market; and
 - (c) of the adequacy and results of FEX's testing of its technology systems, including testing of all necessary external connections which FEX needs to have in place to operate the market, according to the governance framework.

- (3) FEX must give to ASIC, in writing:
- (a) a projection of FEX's cash flows for the first 12 months of operation of the market, including the projected cash outflow for each month within the period, based on FEX's reasonable estimate of what is likely to happen over that period; and
 - (b) the calculations and assumptions used for preparing the projection referred to in paragraph (a), including a description of why the assumptions relied upon are the appropriate assumptions; and
 - (c) evidence that FEX, based on the projected cash flows under paragraph (a), holds an amount of cash that is no less than the projected total cash outflow for the first six months of operation of the market.
- (4) FEX must give to ASIC written evidence that an eligible financial provider has given to FEX an enforceable and unqualified commitment to pay on demand from time to time to:
- (a) FEX, an amount of cash that is sufficient, based on the projected cash flows under paragraph (3)(a), to cover FEX's total projected cash outflows for the first six months of operation of the market; or
 - (b) FEX's creditors or a trustee for FEX's creditors, an amount for which FEX is liable to those creditors at the time of the demand, not exceeding the amount referred to in paragraph (4)(a).
- (5) FEX must confirm to ASIC in writing that it has employed or engaged all necessary people in all of the positions described in its application under subsection 795A(1) of the Act, and that as a result, it has sufficient human resources to operate the market properly in accordance with its obligations under paragraph 792A(d) of the Act.
- (6) FEX must give to ASIC written evidence of the source of funds for the Division 3 arrangements for the purposes of section 7.
- (7) FEX must give to ASIC written evidence that each person that will be, or is expected to be, a participant or a clearing entity of the market at the time that FEX commences operating the market:
- (a) satisfies the requirements for admission as a participant or a clearing entity, as applicable, under the operating rules and procedures of FEX;
 - (b) has been approved by FEX as a participant or a clearing entity, as applicable, under the operating rules and procedures of FEX;
 - (c) has complied with any conditions of its admission as a participant or a clearing entity, as applicable, under the operating rules and procedures of FEX; and

- (d) has passed all applicable conformance tests specified by FEX under the operating rules and procedures of FEX, in relation to each facility for the electronic transmission of orders to the FEX market that the person proposes to make available at or around the time that FEX commences operating the market.

9. Financial resource requirements

From at least the date that FEX commences to operate the market until FEX has been cash-flow positive for six consecutive months, FEX:

- (a) must not transfer any funds to a related body corporate (other than as part of trading fee rebates that may be due through trading on the market);
- (b) must give ASIC on a quarterly basis, no later than 28 days after the end of each quarter, a report which contains:
 - (i) a statement of cash flows and a statement of financial position for the quarter;
 - (ii) a projection of cash flows for the next 12 months, including the projected cash outflow for each month within the period, based on FEX's reasonable estimate of what is likely to happen over that period; and
 - (iii) a statement of the directors regarding whether FEX continues to satisfy the requirements of paragraph (c);
- (c) must have at all times:
 - (i) based on the projected cash flows under subparagraph (b)(ii), an amount of cash no less than the projected total cash outflow for the next six months; and
 - (ii) based on the projected cash flows under subparagraph (b)(ii), net tangible assets of an amount that is no less than the projected total cash outflow for the next six months;
 - (iii) an enforceable and unqualified commitment given to FEX by an eligible financial provider to pay on demand from time to time to:
 - A. FEX an amount of cash that is sufficient, based on the most recent projected cash flows under subparagraph (b)(ii), to cover FEX's total projected cash outflows for the next six months of operation of the market; or
 - B. FEX's creditors or to a trustee for FEX's creditors, an amount for which FEX is liable to those creditors at the time of the demand, not exceeding the amount referred to in sub-subparagraph (c)(iii)(A); and

(d) as soon as practicable, must give written notice to ASIC if:

- (i) it considers its financial resources are insufficient to meet the requirements of paragraph (c);
- (ii) funds are called upon the commitment described in subsection 8(4) or subparagraph (b)(iii);

including a description of the circumstances that led to FEX having to give notice to ASIC under this paragraph and the measures if any that FEX is taking to obtain the financial resources necessary to meet the requirements of paragraph (c).