

## **New Zealand Financial Product Market Licence (Australian Securities Exchange Limited) 2014**

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### **1 Title**

This licence may be cited as the New Zealand Financial Product Market Licence (Australian Securities Exchange Limited) 2014.

### **2 Definitions**

(1) In this licence:

**Act** means the Financial Markets Conduct Act 2013.

**Clearing House** means ASX Clear (Futures) Pty Limited.

**Commencement Date** means the date on which clause 42 of Schedule 4 of the Act commenced, being 1 December 2014.

**Company** means Australian Securities Exchange Limited (ABN 83 000 943 377).

**Existing Market** means the derivatives market operated by the Company that, immediately before the Commencement Date, was an authorised market within the meaning of section 37(1) of the Act, being the ASX 24 Market.

**FMA** means the Financial Markets Authority.

**Market Rules** has the same meaning as in the Act and includes the rules of the Company that apply to the Existing Market, known as the ASX 24 Operating Rules, as amended or replaced from time to time.

**New Zealand Participant** means a Participant who is making Regulated Offers of derivatives in New Zealand within the territorial scope of the Act.

**Participant** means Trading Participant as defined in the Market Rules.

**Regulated Offer** has the same meaning as in the Act.

(2) Any term or expression that is defined in the Act and used, but not defined, in

this Licence has the same meaning as in the Act.

### **3 Licence and revocation**

- (1) This licence is a deemed licence conferred under clause 42, Schedule 4 of the Act to operate the Existing Market.
- (2) This licence is deemed to have been issued under section 317 of the Act.
- (3) This licence shall continue in force until revoked by the FMA.

### **4 Application**

This deemed licence is subject to conditions set out in this licence and applicable requirements in the Act for licensed market operators.

### **5 Operating condition**

Under this licence the Company may operate only the Existing Market.

### **6 Market Rules condition**

- (1) The Market Rules that applied to the Existing Market immediately before the Commencement Date continue to have effect in relation to that market as if those rules have been approved under section 331 of the Act.
- (2) The Company must notify the FMA of any proposed material amendments to the Market Rules not less than 14 days, or such other time as agreed with the FMA, before such amendments are effected.
- (3) The Company must notify the FMA if it seeks to transfer or assign any of its rights, entitlements, or obligations under the Market Rules to any person, not less than 14 days before such transfer or assignment becomes effective.

### **7 Conditions relating to the licensing of New Zealand Participants**

- (1) The Company must require New Zealand Participants to be licensed as a derivatives issuer under Part 6 of the Act, unless the terms and conditions of the New Zealand Participant's participation in the Existing Market restrict the New Zealand Participant from making Regulated Offers of derivatives.

- (2) The Company must require New Zealand Participants to notify the Company immediately if the New Zealand Participant's derivatives issuer licence under Part 6 of the Act is revoked.

## **8 Disclosure by Participants to New Zealand clients**

- (1) Before a Participant accepts the first order from a client in New Zealand to deal on the Existing Market, the Company must require the Participant to disclose to the client the significant differences between trading derivatives on the Existing Market and trading derivatives on a New Zealand-based market.
- (2) The matters that must be disclosed include, but are not limited to, the following:
  - (a) the Company's principal place of business is located in Australia;
  - (b) the Existing Market is regulated primarily under the regulatory regime of Australia;
  - (c) the rights and remedies of, and compensation arrangements for, investor who acquire products offered on the Existing Market may differ from the rights and remedies of, and compensation arrangements for, investors who acquire products offered on a New Zealand-based market;
  - (d) New Zealand investors who acquire products offered on the Existing Market may be subject to the effects of changes in currency exchange rates.

## **9 Clearing and settlement arrangements conditions**

- (1) The Company must have and maintain at all times clearing and settlement arrangements for transactions effected through the Existing Market. The clearing and settlement arrangements for the Existing Market are those provided by the Clearing House.
- (2) The Company must notify the FMA of any proposed amendments to the rules and procedures of the Clearing House not less than 14 days, or such other time as agreed with the FMA, before such amendments are effected.

## **10 Enforcement of Market Rules condition**

The Company must maintain the arrangements set out in the ASX 24 Operating Rules and the ASX Enforcement and Appeals Rulebook for enforcing compliance with the Market Rules.

## **11 Reporting obligations conditions**

- (1) The Company must give the FMA the following information:
  - (a) the current name and business address of each New Zealand Participant;  
and
  - (b) the name of the Clearing House clearing member used by each New Zealand Participant to clear the trades of that New Zealand Participant; and
  - (c) details of any written complaint received by the Company during the reporting period concerning a New Zealand Participant or that New Zealand Participant's directors or other personnel where such complaint has not been resolved to the satisfaction of the complainant; and
  - (d) any information that the Australian Securities and Investment Commission has obtained from the Company during the reporting period in relation to a New Zealand Participant or in relation to the Company's operation of the Existing Market in New Zealand.
- (2) The Company must give the FMA the information required under clause 10(1) within 30 days of the end of each reporting period. For the purposes of this clause 10, the reporting period is each six-month period ending on 30 June or 31 December.
- (3) The Company must notify the FMA as soon as practicable if:
  - (a) the Company's licence to operate a derivatives market in the Company's place of incorporation is varied or revoked; or
  - (b) any statutory requirement applying to the Company as a result of, or in connection with, its operation of a derivatives market is amended in a manner that materially alters an obligation or requirement imposed on the Company.

- (4) To the extent permissible by law, the Company must immediately notify the FMA if:
- (a) the Company becomes aware that the Company, or any of the Company's directors or senior management personnel, is subject to investigation by any regulatory or law enforcement agency; or
  - (b) the Company, or any of the Company's directors or senior management personnel, is subject to any adverse finding by any Court, tribunal, regulatory authority, or disciplinary committee; or
  - (c) the Company becomes aware that the Clearing House, or any of its directors or senior management personnel, is subject to investigation by any regulatory or law enforcement agency; or
  - (d) the Clearing House, or any of its directors or senior management personnel, is subject to any adverse finding by any Court, tribunal, regulatory authority, or disciplinary committee.
- (5) The Company must immediately notify the FMA if the Company knows or suspects that a New Zealand Participant has committed, is committing, or is likely to commit a significant contravention of –
- (a) the rules and procedures of the Clearing House, if applicable; or
  - (b) any enactment effective in the Company's place of incorporation which the New Zealand Participant must comply with because of its participation in the Existing Market.
- (6) The Company must, if requested to do so in writing by the FMA and if not prohibited by any applicable law, answer any question asked by the FMA (or any person authorised by the FMA), that is necessary or desirable to enable the FMA to fulfil its functions.
- (7) The Company must at all times ensure that the FMA has been given notice of the person, or persons, the FMA should contact in the first instance about matters that require a response from the Company.

## **12 Compliance report**

For the purposes of section 337 of the Act, the reporting period is every second financial year of the Company following the Commencement Date.

**13 Assessment by Australian Securities and Investments Commission**

The Company must provide the FMA with a copy of any report on the Company by the Australian Securities and Investment Commission, or any other applicable regulatory agency, within three working days of its publication.

**14 Condition relating to jurisdiction**

The Company must submit to the non-exclusive jurisdiction of the New Zealand courts in actions brought by the FMA.

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