



FINANCIAL MARKETS AUTHORITY
TE MANA TATAI HOKOHOKO - NEW ZEALAND

Futures Contracts (OM Financial Limited) Exemption Notice 2012

Pursuant to section 48(1)(d) of the Securities Markets Act 1988, the Financial Markets Authority gives the following notice (to which is appended a statement of reasons of the Financial Markets Authority).

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Notice

- Title**
This notice is the Futures Contracts (OM Financial Limited) Exemption Notice 2012.
- Commencement**
This notice comes into force on 8 October 2012.
- Expiry**
This notice expires on the close of 30 September 2017.
- Interpretation**
 - In this notice, unless the context otherwise requires, —
Act means the Securities Markets Act 1988
AFS licence means an Australian financial services licence granted under the Corporations Act
client segregated account means a client segregated account of a specified broker maintained pursuant to the Corporations Act
Corporations Act means the Corporations Act 2001 of the Commonwealth of Australia

Corporations Regulations means any regulations made under the Corporations Act

default, in relation to a specified broker, means a situation where the specified broker uses money in a client segregated account to meet another client's obligations under a derivative transaction, does not promptly cover any resulting shortfall in the client segregated account either with its own funds or by recovering the amount owing from the responsible client, and as a result OM Financial is unable to obtain the return of all, or any part, of the client funds deposited with the specified broker within standard timeframes

form 3 acknowledgement means the signed written statement in form 3 in the Schedule to the Regulations which is required pursuant to regulation 10(1)

OM Financial means OM Financial Limited

Regulations means the Futures Industry (Client Funds) Regulations 1990

specified broker means an entity that is the holder of an AFS licence that permits that entity to provide broker services in relation to derivatives, and to hold client money for that purpose.

- (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

- (1) OM Financial and every person acting on its behalf are exempt from compliance with regulation 10 of the Regulations to the extent that, where a specified broker has declined to give a form 3 acknowledgement in respect of any client funds accounts OM Financial establishes with it, OM Financial is not required to comply with regulation 10(2) before paying client money for crediting to a client funds account with that specified broker.

6 Conditions of exemption

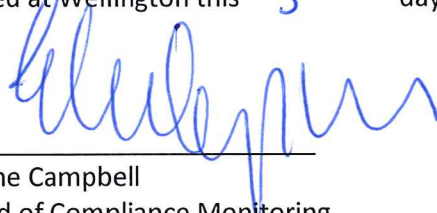
The exemption in clause 5 is subject to the conditions that—

- (a) every specified broker with which OM Financial establishes a client funds account is required to comply with the requirements of the Corporations Act and the Corporations Regulations relating to client money and client property;
- (b) all client money which OM Financial transfers to a specified broker is paid into a client segregated account of that specified broker;

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- (c) in the event of a default by a specified broker, OM Financial must meet the shortfall owing to its clients by depositing into one or more appropriate client bank accounts an amount equal to the amount of client funds it is unable to obtain the return of, and that amount is treated as having been deposited pursuant to regulation 18(1) of the Regulations;
- (d) OM Financial does not hold proprietary trading accounts with any specified broker with which it has a client funds account unless that broker has given a form 3 acknowledgement in respect of every client funds account OM Financial holds with that specified broker;
- (e) OM Financial must include in its disclosure statement an explanation of when OM Financial will place client money with specified brokers who have not provided a form 3 acknowledgement and why.

Dated at Wellington this 5th day of October 2012



Elaine Campbell
Head of Compliance Monitoring
Financial Markets Authority

Statement of reasons

This notice, which comes into force on 28 September, exempts OM Financial Limited ('OM Financial') and every person acting on its behalf from regulation 10 of the Futures Industry (Client Funds) Regulations 1990 to allow it to maintain client funds accounts with derivatives brokers that are licensed in Australia, without those Australian brokers first providing an acknowledgement that is usually required under the Regulations regarding the 'client money' status of funds paid to that Australian broker by OM Financial.

The Financial Markets Authority, after satisfying itself as to the matters set out in section 48(2) of the Securities Markets Act 1988, considers it is appropriate to grant this exemption because:

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- The Futures Industry (Client funds) Regulations 1990 ('the Regulations') requires a New Zealand futures dealer that opens a client funds account with an overseas broker to try to obtain an acknowledgement regarding the 'client money' of funds paid to that Australian broker by OM Financial. However, there are technical differences in how client money is permitted to be handled between the Regulations and Corporations Act 2001 (Commonwealth of Australia) ('the Corporations Act') that make it undesirable, from the perspective of some Australian brokers, to provide that acknowledgement.
- Where the overseas broker declines to provide the acknowledgement, the futures dealer must instead get a written consent from each client before placing their money with that overseas broker. It is likely some clients will not fully appreciate the purpose or implications of this consent. Further, the requirement to obtain consents from clients can be onerous, and would mean OM Financial may have to restrict its offer of some products to those clients who have provided consent in advance. In circumstances where dealing with overseas brokers who are willing to provide the required acknowledgement does not necessarily represent a better arrangement for clients, the requirements of the Regulations would place OM Financial at a disadvantage if it elects to deal with reputable brokers that are not willing to provide the required acknowledgement.
- The exemption allows OM Financial to offer its clients futures contracts through derivatives brokers who are regulated under Australian law, and to place client money with those Australian brokers for that purpose, without those Australian brokers being required to provide the acknowledgement that is usually required under Regulations or obtaining consents from its clients. This facilitates OM Financial Limited using reputable Australian brokers, some of whom are not willing to provide the acknowledgement.
- The conditions of exemption ensure that the client money paid by OM Financial Limited to the Australian broker is required to be held, and dealt with, by that Australian broker in accordance with the provisions of the Corporations Act and regulations made under the Corporations Act. The conditions also ensure that any increased risk of loss as a result of client money held by an Australian broker being held in accordance with the Corporations Act, rather than the Regulations, is borne by OM Financial rather than its clients. In this regard, the conditions ensure there are adequate alternative safeguards to protect client money and client property.