



Futures Contracts (Man Financial Australia Limited Agreements) Notice 2006

Pursuant to section 37(7) of the Securities Markets Act 1988, the Securities Commission gives the following notice.

Contents

		Page
1	Title	1
2	Commencement	1
3	Interpretation	1
4	Application of Part 3 of Act to specified futures contracts	2

Notice

1 Title

This notice is the Futures Contracts (Man Financial Australia Limited Agreements) Notice 2006.

2 Commencement

This notice comes into force on the day after the date of its notification in the *Gazette*.

3 Interpretation

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

Act means the Securities Markets Act 1988

CFD means each contract for difference in respect of shares or other securities that is offered by Man Financial under a product disclosure statement that complies with the Authorised Futures Dealers Notice (No 4) 2006

Man Financial means Man Financial Australia Limited, a company incorporated in Australia

- specified futures contract** means a CFD—
- (a) to which Man Financial is a party; and
 - (b) under the terms of which it is contemplated or understood that the obligations of the parties may be satisfied other than by actual delivery of underlying securities; and
 - (c) that is offered to persons in New Zealand by Man Financial under the terms of each CFD and in accordance with the terms of the Authorised Futures Dealers Notice (No 4) 2006.
- (2) Any term or expression that is defined in the Act and used, but not defined, in this notice has the meaning given to it by the Act.

4 Application of Part 3 of Act to specified futures contracts

Every specified futures contract is declared to be an agreement to which Part 3 of the Act applies.

Dated at Wellington this 31st day of October 2006.

The Common Seal of the Securities Commission was affixed in the presence of:

[Seal]

C A N Beyer,
Member.

Statement of reasons

Under this notice, which comes into force on the day after the date of its notification in the *Gazette*, every specified futures contract (as that term is defined in the notice) that is offered by Man Financial Australia Limited (**Man Financial**) is declared to be an agreement to which Part 3 of the Securities Markets Act 1988 applies.

The term futures contract is defined by section 37(1) of the Securities Markets Act 1988 to include an agreement declared by the Securities Commission to be an agreement to which Part 3 of the Act applies.

The Securities Commission considers that it is appropriate to make the declaration for the following reasons:

- the CFDs in respect of shares and other securities (the **products**) are settled otherwise than by delivery, which is a key characteristic of commodity futures contracts under New Zealand law. This means that the contract provides for the obligation of each party to the contract to be met by some means other than by physical delivery of the commodity that is the subject of the contract, in this case the shares or securities. Each party's obligation, in practice, is met either by payment or receipt of a settlement amount. This amount is the difference between the agreed price for the contract and the actual market price of that commodity on the date that the futures contract expires:
- the products are also synthetic in nature because, although the contract is valued by reference to a share or other security, it does not confer any right on the buyer to ever receive the shares or securities. The value of the contract at any time is determined by the difference between the price of the underlying share or security when the contract was entered into and the actual price of the share or security at the time of valuation:
- because the products are synthetic and settled otherwise than by delivery, the disclosure requirements (about Man Financial) in terms of the Securities Act 1978 do not provide the best regulatory solution for the products:
- the declaration provides certainty in the market as, although the products have the characteristics of a futures contract, there is doubt about whether under New Zealand law various derivative products (in particular those where the underlying

asset is a company share or security) should be treated as securities, and so regulated under the Securities Act 1978, or as futures contracts, and so regulated under the Securities Markets Act 1988:

- the declaration enables the products to be regulated in the same manner as futures contracts under New Zealand law.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 2 November 2006.

This notice is administered by the Securities Commission.
