



Futures Contracts (CMC Markets NZ Limited Agreements) Notice 2006

Pursuant to section 37(7) of the Securities Markets Act 1988, the Securities Commission gives the following notice (to which is appended a statement of reasons of the Securities Commission).

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Notice

1 Title

This notice is the Futures Contracts (CMC Markets NZ 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, other securities, or a basket of shares or other securities that relate to a specific sector, that is offered by CMC NZ under a disclosure document that complies with the Authorised Futures Dealers Notice (No 2) 2006

CMC NZ means CMC Markets NZ Limited

specified futures contract means a CFD—

- (a) to which CMC NZ 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 CMC NZ under the terms of each CFD and in accordance with the terms of the Authorised Futures Dealers Notice (No 2) 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 11th day of April 2006.

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

[L.S.]

J. Diplock,
Chairperson.

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 CMC Markets NZ Limited (**CMC NZ**) 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, or a basket of shares or other securities that relate to a specific sector, (the **products**) are synthetic in nature and are settled otherwise than by delivery. Therefore, the disclosure requirements (about CMC NZ) 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 some doubt about whether they fall entirely within the definition of a futures contract in 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*: 13 April 2006.

This notice is administered by the Securities Commission.
