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NEWS

Are you operating a market without a licence?

If you facilitate the sale and purchase of interests in your schemes between existing and/or new investors, then you could be operating a financial market without a licence. However, as senior associate Kristy McCluskey explains here, ASIC exempts operators of low volume financial markets if certain criteria are met.

WHO NEEDS A LICENCE?

A financial market is 'a facility through which offers to acquire or dispose of financial products are regularly made or accepted'. This includes matching buyers and sellers of interests in schemes. Importantly, this seemingly innocuous matchmaking of willing buyers and sellers requires an Australian financial market licence, similar to what exchanges like the ASX hold.

Fortunately, ASIC exempts operators of low volume financial markets from having to hold such a licence if the operator can meet certain criteria.

WHAT IS A LOW VOLUME FINANCIAL MARKET?

A low volume financial market is one where no more than 100 transactions are entered and the value of the transactions does not exceed \$1.5 million in a 12-month period from the date the exemption is granted.

This means an operator who relies on the exemption can facilitate the sale and purchase of interests in its schemes up to a maximum of 100 buy/sell transactions with an aggregate value of \$1.5 million in any 12-month period.

WHO CAN RELY ON THE EXEMPTION?

To rely on the exemption, the operator must be authorised under an AFSL to provide certain financial services, apply to ASIC, and comply with several conditions, including—

- a limit on the operation of two financial markets by the operator and its associates
- the financial products can be traded on a financial market, but are not traded on a licensed financial market (such as ASX)
- the financial market must not have a mechanism for the automatic execution of orders or contracts between the buyer and seller
- the operator must not handle purchase money which must be exchanged directly between the buyer and seller

- provide a report to ASIC after the conclusion of each 12-month period confirming the total number and value of transactions carried out on the market.
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HOW CAN WE HELP?

Operating a financial market without a licence is an offence. If your investors are seeking your assistance to sell down or increase their interests in your schemes, then we can help you prepare an application to ASIC to rely on the exemption.

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