

**Reprint
as at 3 November 2006**



**Futures Contracts (Man Financial
Australia Limited Agreements)
Notice 2006
(SR 2006/335)**

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

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Notice

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

Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

The Futures Contracts (Man Financial Australia Limited Agreements) Notice 2006 is administered by the Securities Commission.

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.

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Notes

1 *General*

This is a reprint of the Futures Contracts (Man Financial Australia Limited Agreements) Notice 2006. The reprint incorporates all the amendments to the Futures Contracts (Man Financial Australia Limited Agreements) Notice 2006 as at 3 November 2006, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that have yet to come into force or that contain relevant transitional or savings provisions are also included, after the principal enactment, in chronological order.

2 *Status of reprints*

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 *How reprints are prepared*

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not

included in Acts, and provisions that are repealed or revoked are omitted. For a detailed list of the editorial conventions, *see* <http://www.pco.parliament.govt.nz/legislation/reprints.shtml> or Part 8 of the *Tables of Acts and Ordinances and Statutory Regulations, and Deemed Regulations in Force*.

4 Changes made under section 17C of the Acts and Regulations Publication Act 1989

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
 - indentation
 - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
 - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
 - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

5 *List of amendments incorporated in this reprint
(most recent first)*
