



## **ASX CLEAR (FUTURES) OPERATING RULES**

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## PART 11 SECURITY INTEREST PROVISIONS

### 122 Introduction

This Part of the Rules contains the provisions applicable to property which has been transferred to, or otherwise provided to, or designated for the benefit of, ASX Clear (Futures) as Initial Margin if ASX Clear (Futures) has designated this Rule as applicable to that property (either by reference to the transferee of the property, the type of property or by some other specification). The property to which this Rule applies is referred to as “**Secured Initial Margin**”.

### 123 Application of Security Interest provisions

ASX Clear (Futures) may determine the time at which application of the provisions of this Part of the Rules is to commence in its sole discretion. ASX Clear (Futures) may make this determination at different times for different types of Market Contracts. However, a determination does not have the effect of including any property which has already been transferred to, or otherwise provided to, or designated for the benefit of ASX Clear (Futures) at that time as Secured Initial Margin. Any provision of these Rules which provides that Secured Initial Margin is absolutely transferred to ASX Clear (Futures) does not apply if that Secured Initial Margin is subject to the security interest created under this Part of the Rules.

### 124 Secured Initial Margin

- 124.1 All Secured Initial Margin is subject to a security interest in favour of ASX Clear (Futures) to secure the performance by the relevant Clearing Participant of its obligations to ASX Clear (Futures). The interest and rights of ASX Clear (Futures) pursuant to the security interest to or in respect of the Secured Initial Margin have priority over the interest and rights, whenever or however acquired or created, of any other person claiming an interest in that Secured Initial Margin.
- 124.2 Each Clearing Participant grants this security interest as beneficial owner of the Secured Initial Margin.
- 124.3 This security interest is a charge.
- 124.4 Each Clearing Participant agrees that it will not allow any other security interest, trust or encumbrance to subsist or be created over any of its Secured Initial Margin at any time.
- 124.5 This security is a continuing security and is not satisfied by any intermediate payment, delivery or satisfaction of the whole or any part of the amounts or property to ASX Clear (Futures), and is not affected by any other security interest now or subsequently held by ASX Clear (Futures) for all or any of the amounts payable or property deliverable to it.
- 124.6 ASX Clear (Futures) may, at the Clearing Participant's expense, apply for any registration, or give any notification, in connection with this security interest. The Clearing Participant consents to any such registration or notification and agrees not to make an amendment demand.
- 124.7 Each Clearing Participant agrees to do anything (such as obtaining consents, signing and producing documents, producing receipts and getting documents

completed and signed), which ASX Clear (Futures) asks and considers necessary to:

- (a) provide more effective security over the Secured Initial Margin for payment or delivery of amounts which are, or may become, owing to ASX Clear (Futures); or
- (b) ensure that this security interest is enforceable, perfected (including, where possible, by control in addition to registration) and otherwise effective; or
- (c) enable ASX Clear (Futures) to apply for any registration, or give any notification, in connection with this security interest so that it has the priority required by ASX Clear (Futures); or
- (d) enable ASX Clear (Futures) to exercise ASX Clear (Futures)'s rights in connection with the Secured Initial Margin.

## **125 Application of Secured Initial Margin**

125.1 In addition to any other rights which ASX Clear (Futures) has in connection with the Default of a Clearing Participant, ASX Clear (Futures) may take any of the following action in respect of a Defaulted Clearing Participant that has provided Secured Initial Margin towards the payment or discharge of the amounts payable or property deliverable by that Defaulted Clearing Participant:

- (a) receive any dividends, interest or other income payable in respect of the Defaulted Clearing Participant's Secured Initial Margin and do anything else in relation to that Secured Initial Margin that an owner of that Secured Initial Margin could do;
- (b) register all or part of the Defaulted Clearing Participant's Secured Initial Margin in the name of ASX Clear (Futures) or its nominee;
- (c) deal with all or part of the Defaulted Clearing Participant's Secured Initial Margin in the same way as the holder or owner of the Secured Initial Margin could if the Secured Initial Margin were not secured in favour of ASX Clear (Futures);
- (d) sell all or part of the Defaulted Clearing Participant's Secured Initial Margin whether by public auction and/or private arrangement and whether on-market or off-market;
- (e) allow the purchaser of any the Defaulted Clearing Participant's Secured Initial Margin time for payment of all or part of the purchase money;
- (f) appoint a receiver or receiver and manager to the Defaulted Clearing Participant's Secured Initial Margin (which is to be the agent of that Clearing Participant) to do any of the things referred to in (a) to (e) above; and
- (g) do anything which ASX Clear (Futures) considers necessary for any of these purposes.

For this purpose, ASX Clear (Futures) may put into force and exercise immediately or as and when it may see fit, without further demand for payment or delivery, notice to any person, advertisement or other formality (all of which are waived by each Clearing Participant), any and every right, remedy and power possessed by ASX Clear (Futures) by virtue of these Rules or available to a secured creditor.

Without limiting this, if ASX Clear (Futures) exercises a power of sale, the timing of such sale is to be made in ASX Clear (Futures)' absolute discretion and ASX Clear (Futures) may take into account the size, amount, liquidity and such other factors in respect of the Secured Initial Margin as ASX Clear (Futures) in its absolute

discretion thinks fit and may sell Secured Initial Margin over such period and by such method as it in its absolute discretion thinks fit. Neither ASX Clear (Futures) nor any receiver is liable to account as a mortgagee in possession.

- 125.2 If ASX Clear (Futures) takes any action under this Rule 125 or exercises any other remedy available to it, the relevant Defaulted Clearing Participant is liable to ASX Clear (Futures) for any and all costs, losses penalties, fines, taxes and damages which ASX Clear (Futures) may incur, including reasonable legal fees incurred in connection with such action or remedies and the recovery of any such costs, losses, penalties, fines, taxes and damages.
- 125.3 Any disposal of any Secured Initial Margin by or on behalf of ASX Clear (Futures) or any receiver is not open to challenge for any reason (including any ground that ASX Clear (Futures) was not entitled to dispose of the Secured Initial Margin or that the Defaulted Clearing Participant did not receive notice of the intended disposal or that the Secured Initial Margin was sold at a price which the Defaulted Clearing Participant considered unacceptable). A person who acquires the Secured Initial Margin need not check whether ASX Clear (Futures) had the right to dispose of the Secured Initial Margin or whether ASX Clear (Futures) is exercising that right properly.

**End of Section.**