

## RESIGNING A PARTICIPATION

<p>The purpose of this Guidance Note</p>	<ul style="list-style-type: none"> <li>To assist clearing participants who wish to resign their participation in ASX Clear (Futures) to understand the process involved</li> </ul>
<p>The main points it covers</p>	<ul style="list-style-type: none"> <li>Requirements to resign a participation</li> <li>ASX's requirement for the participant to have a plan for the orderly winding down of its activities as a participant</li> <li>Issues that a participant should address in such a plan</li> </ul>
<p>Related materials you should read</p>	<ul style="list-style-type: none"> <li>ASX Clear (Futures) Operating Rules Guidance Note 3 <i>Changes in Participation</i></li> </ul>

**History:** Guidance Note 2 amended 16/10/15. A previous version of this Guidance Note was issued in 02/15.

**Important notice:** ASX has published this Guidance Note to assist participants to understand and comply with their obligations under the ASX Clear (Futures) Operating Rules. It sets out ASX's interpretation of the ASX Clear (Futures) Operating Rules and how ASX is likely to enforce those rules. Nothing in this Guidance Note necessarily binds ASX in the application of the ASX Clear (Futures) Operating Rules in a particular case. In issuing this Guidance Note, ASX is not providing legal advice and participants should obtain their own advice from a qualified professional person in respect of their obligations. ASX may withdraw or replace this Guidance Note at any time without further notice to any person.

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## 1. Introduction

This Guidance Note is published by ASX Clear (Futures) Pty Limited (ASX) to assist participants who wish to resign their participation in ASX Clear (Futures) to understand the process involved.

## 2. Requirements to resign a participation

A participant wishing to resign its participation in the ASX Clear (Futures) facility must give written notice to ASX of its intention to resign.<sup>1</sup>

A participant resigning its participation in ASX Clear (Futures) and in another ASX market or clearing and settlement facility can do so in a single notice of resignation, provided it complies with all of the relevant requirements in the Operating Rules for each such market and/or clearing and settlement facility.

## 3. Resignation notice not effective until accepted by ASX

Before ASX will accept its resignation, a participant must:

- perform all of its accrued obligations under the ASX Clear (Futures) Operating Rules, including but not limited to the payment of all fees;
- not be the subject of any disciplinary proceedings or enforcement action within ASX's jurisdiction; and
- not have any open contracts with ASX Clear (Futures).<sup>2</sup>

A resignation is not effective until ASX confirms in writing that these conditions have been met.<sup>3</sup> ASX will provide such confirmation, or reasons why such confirmation cannot be given, within 5 business days of receipt of a request from the participant in that regard.<sup>4</sup>

The resignation will then only be effective<sup>5</sup> at the end of the last day of the quarter in which ASX confirms in writing that the conditions above have been met, so long as this occurs at least 30 days prior to the last day of

<sup>1</sup> ASX Clear (Futures) Operating Rule 11.1(b)(1).

<sup>2</sup> ASX Clear (Futures) Operating Rule 11.1(b)(2).

<sup>3</sup> ASX Clear (Futures) Operating Rule 11.1(b)(2).

<sup>4</sup> ASX Clear (Futures) Operating Rule 11.1(b)(2).

<sup>5</sup> The confirmation by ASX that the participant has satisfied the conditions in ASX Clear (Futures) Operating Rule 11.1(b)(2) for a resignation to be effective and the fact of the participant's resignation do not affect any accrued rights which ASX, its related bodies corporate or other clearing participants have against the participant or any accrued obligations which the participant has to ASX, its related bodies corporate or other clearing participants: see ASX Clear (Futures) Operating Rule 11.1(d).

the quarter<sup>6</sup>. If ASX gives such written confirmation less than 30 days prior to the last day of the quarter, the participant's resignation will not be effective until the end of the last day of the following quarter.<sup>7</sup>

For these purposes, quarters start on 1 March, 1 June, 1 September and 1 December and end on 31 May, 31 August, 30 November and 28/29 February respectively.<sup>8</sup>

#### 4. The requirement for an orderly wind-down plan

ASX expects a participant wishing to resign its participation in ASX Clear (Futures) to satisfy ASX that it has taken, or will have taken before the proposed date of resignation, proper steps for the orderly winding down of its activities as a participant.

Where a participant has already wound down its activities as a participant and is effectively inactive, it need merely state that fact in its resignation notice.

Otherwise, the participant should include with its resignation notice a detailed plan outlining the key dates and milestones for the orderly winding down of its activities as a participant. The plan should cover:

- the proposed date of resignation;
- how the participant will continue to supervise its business and comply with its obligations under the ASX Clear (Futures) Operating Rules up to the date of resignation;
- details of the intended communications with clients about its resignation;
- details of the participant's plans for closing out open positions, or migrating open positions and collateral, so that by the close of business on the proposed date of resignation, it has no positions registered in its name with ASX Clear (Futures) and no remaining clearing obligations to ASX Clear (Futures); and
- details of any other steps the participant intends to take to minimise any potential impact its resignation may have on clients.

A participant resigning its participation in ASX Clear (Futures) and in another ASX market or clearing and settlement facility at the same time should ensure that the plan addresses all of the relevant requirements in the Operating Rules for each such market and/or clearing and settlement facility.

#### 5. Issues to consider in an orderly wind-down plan

In formulating its orderly wind-down plan, a participant should have regard to the following issues that commonly arise in the context of participants resigning:

- ASX has a standard tripartite agreement to facilitate the bulk transfer of derivatives positions from one participant to another. A copy of that agreement can be obtained from ASX Participant Transitions. The agreement will need to be executed by both participants and ASX before the scheduled transfer of positions.
- The participant must continue complying with all of its obligations under the ASX Clear (Futures) Operating Rules<sup>9</sup> until its resignation notice has been accepted by ASX. This includes its obligation to pay relevant fees, including the annual participant fee. Any refund of all or part of that fee is at the discretion of ASX.

<sup>6</sup> ASX Clear (Futures) Operating Rule 11.1(c).

<sup>7</sup> ASX Clear (Futures) Operating Rule 11.1(c).

<sup>8</sup> Clause 1 of Schedule 10 to the ASX Clear (Futures) Operating Rules.

<sup>9</sup> ASX Clear (Futures) Operating Rule 11.1(b)(2)(A).

- ASX will not accept a resignation notice from a participant unless the participant has satisfied all its obligations to ASX.<sup>10</sup> This includes returning all ASX equipment and paying all outstanding fees and other amounts (including monetary penalties) due to ASX.
- Pending enforcement action by ASX against a participant for a breach of the ASX Clear (Futures) Operating Rules may hold up its resignation, particularly if there is any likelihood of a monetary penalty being imposed by ASX in relation to the breach.<sup>11</sup> Where ASX receives a notice of resignation from a participant against whom there is pending enforcement action, ASX will endeavour to finalise that action as quickly as it reasonably can, although its ability to do so will very much depend on the level of co-operation it receives from the participant. If the participant wishes its resignation to take effect prior to the conclusion of the enforcement action, ASX may be prepared to accept the provision of a bond or bank guarantee sufficient to cover any potential monetary penalty to ASX as an acceptable way forward.
- A participant's futures commitment will not generally be returned to it until the first business day of the new quarter<sup>12</sup> immediately following the date on which its resignation is effective.<sup>13</sup>

## 6. Where to send a resignation notice

A participant's resignation notice should be sent to:

The Manager, Participant Transitions  
ASX Clearing Services  
Level 5  
20 Bridge Street  
SYDNEY NSW 2000

The ASX Participant Transitions team will notify all relevant areas within ASX of the intended resignation, including Operations, Participants Compliance and Finance. It will also act as the primary point of contact and liaise with regards to any conditions that remain unsatisfied.

ASX Participant Transitions will co-ordinate the operational aspects of the resignation, including arranging for the cancellation of data subscriptions, return of ASX equipment and payment of outstanding ASX fees.

## 7. Continuation of certain rule obligations following resignation

It should be noted that notwithstanding ASX's acceptance of a participant's resignation notice:

- the ASX Clear (Futures) Operating Rules continue to apply and ASX continues to have jurisdiction in respect of the participant concerning any conduct or any failure to comply with the rules which occurred before the acceptance of the notice, whether that conduct or failure was by the participant or by any other person for whose conduct the participant was responsible; and
- the participant continues to be bound by any indemnity given by it under the rules.<sup>14</sup>

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<sup>10</sup> ASX Clear (Futures) Operating Rule 11.1(b)(2)(A).

<sup>11</sup> ASX Clear (Futures) Operating Rule 11.1(b)(2)(B).

<sup>12</sup> New quarters start on 1 March, 1 June, 1 September and 1 December: Clause 1 of Schedule 10 to the ASX Clear (Futures) Operating Rules.

<sup>13</sup> ASX Clear (Futures) Operating Rule 6.3.

<sup>14</sup> ASX Clear (Futures) Operating Rule 11.1(e).