

Client Protection Model

Fact Sheet



This Fact Sheet outlines the key features of the Client Protection Model that supports the Client Clearing Service offered by ASX Clear (Futures) Pty Limited (“**ASX**”). The Client Protection Model applies to ASX 24 Exchange Traded Derivatives and OTC Interest Rate Derivatives.

What is the Client Protection Model?

‘Client Protection Model’ is the name ASX applies to the agency-style clearing model that it is introducing to support the Client Clearing Service. It refers to the legal relationships established by proposed Part 10 of the Futures Rules between a Client (whether utilising an Omnibus Account or Individual Client Account), its Clearing Participant and ASX, and the related arrangements for segregation and portability of client positions and associated initial margin.

When will the Client Protection Model take effect?

Subject to regulatory clearance, the Client Protection Model will take effect at the time of commercial launch of the Client Clearing Service for OTC Interest Rate Derivatives (expected end Q1 2014) and ASX 24 Exchange Traded Derivatives (expected end Q2 2014). ASX will confirm the commencement dates closer to commercial launch.

Who is a CPM Client?

A CPM Client is a Client with an Open Position in a financial product to which the Client Protection Model applies.

How does the Client Protection Model work?

Under the Client Protection Model, the Clearing Participant clears transactions as agent of its Client, binding the CPM Client to cleared contracts through the authority which the CPM Client has given the Clearing Participant to act on its behalf pursuant to the client agreement. In this respect, the Client Protection Model creates contractual relationships that are similar (though not identical) to those that arise under the so-called ‘agency model’ of central clearing, as applied to US Derivatives Clearing Organisations by CFTC regulations. The Client Protection Model under Australian law establishes a clear set of contractual relationships that, through Commonwealth legislation applicable to ‘netting markets’ such as ASX, give legal protection to arrangements for segregation and portability of client positions and associated initial margin under ASX’s Operating Rules.

Under the Operating Rules which give effect to the Client Protection Model:

- The Clearing Participant remains fully liable for all obligations to ASX in connection with cleared contracts (referred to in the Operating Rules as 'Open Contracts');
- Each of the Clearing Participant, the CPM Client and ASX is a party to Open Contracts;
- ASX agrees not to take action against the CPM Client personally for the performance of any obligation owing by the Clearing Participant under Open Contracts;
- ASX recognises the interest of the CPM Client or CPM Clients (depending on whether an Individual Client Account or Omnibus Account is used) in the value of initial margin calculated by ASX with respect to the client account;
- If the Clearing Participant has defaulted:
 - a CPM Client that has elected to use an Individual Client Account has a right to require ASX to port its positions and associated initial margin to an alternate Clearing Participant, where the CPM Client has satisfied the porting conditions within the applicable porting window;
 - a CPM Client that has elected to use an Omnibus Account has a right to request, jointly with all other CPM Clients holding positions in the account, ASX to port the positions in the account and associated initial margin to an alternate Clearing Participant. Porting of positions in an Omnibus Account is at ASX's discretion;
 - a CPM Client has a right to communicate with ASX in connection with the porting process.

How does the Client Protection Model affect Clearing Participants relative to ASX's existing clearing model?

The key difference between the Client Protection Model and ASX's existing clearing model (commonly known as a 'principal model') is that under the Client Protection Model, the Clearing Participant clears transactions as agent of its Client, binding the CPM Client to cleared contracts through the authority which the CPM Client has given the Clearing Participant to act on its behalf under its client agreement. Under its existing clearing model ASX does not recognise any contractual relationship with the Client and treats the Clearing Participant as the principal with whom it is contracting.

In most other respects, the Client Protection Model and ASX's existing clearing model are identical in their practical effect on Clearing Participants. For instance, under both clearing models:

- The Clearing Participant is liable to ASX on its Open Contracts as principal obligor;
- In the ordinary course of business (i.e. unless the Clearing Participant is in default), ASX will communicate and deal with the Clearing Participant only, not its CPM Clients, in relation to Open Contracts;
- The Clearing Participant is responsible for agreeing the terms of its relationship ('client agreement') with its CPM Client. The client agreement, rather than the Operating Rules, governs the rights and obligations between the Clearing Participant and its CPM Client (refer Figure 1, below);
- The Clearing Participant is responsible for managing the risks arising from the default of its CPM Client, in accordance with the client agreement and applicable law. The Operating Rules are non-prescriptive about how the Clearing Participant manages those risks.

The main significance of ASX's implementation of the Client Protection Model is for the Clients of Clearing Participants: the Client Protection Model gives CPM Clients upon their Clearing Participant's default direct legal rights against ASX to segregation and portability of client positions and value of the associated initial margin, subject to and in accordance with ASX's Operating Rules. Clients do not have such rights under ASX's existing clearing model.

A diagrammatical depiction of the Client Protection Model is in Figure 1 below.

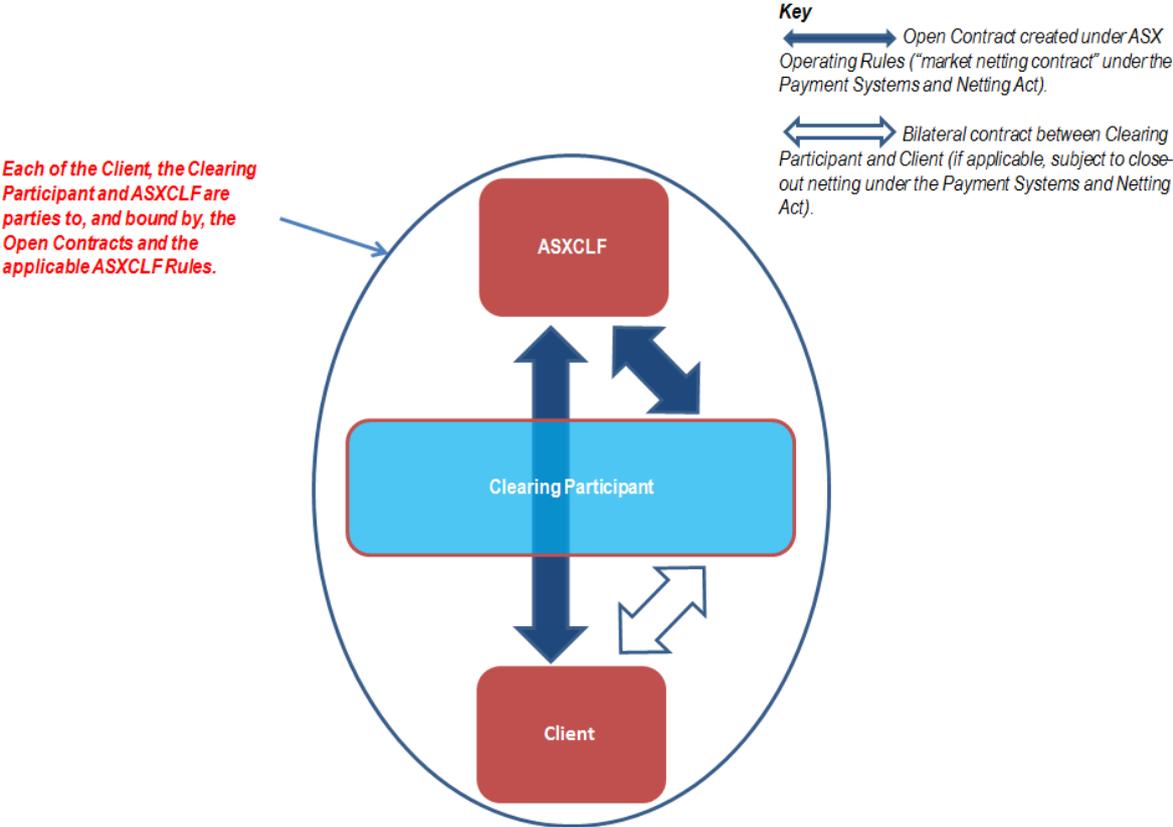


Figure 1: Client Protection Model – legal relationships overview

Does the Client Protection Model affect the Clearing Participant's close out netting rights with respect to its Clients?

ASX has commissioned an external Australian law legal opinion, which will be made available to Clearing Participants, to confirm that the Client Protection Model will not affect the application of the Payment Systems and Netting Act 1998 (Cth) to close-out netting of obligations owed between a Clearing Participant and its CPM Client under a close-out netting contract between them. Whether a bilateral contract between a Clearing Participant and its CPM Client is a 'close-out netting contract' is a matter on which Clearing Participants should seek their own legal advice.

Can actions taken by ASX to port CPM Client property be reversed or unwound?

ASX has commissioned an external Australian law legal opinion, which will be made available to Clearing Participants and CPM Clients on request, to confirm the validity and enforceability of porting of CPM Client property in accordance with ASX's Operating Rules on Clearing Participant default.