



# ASX CLEAR (FUTURES) OPERATING RULES

<b>PART 2</b>	<b>GENERAL .....</b>	<b>203</b>
2	[Deleted].....	203
3	ESTABLISHMENT OF ASX CLEAR (FUTURES).....	203
	Fees.....	203
	Client Agreement Forms .....	204
	Disclosure of Information.....	204
4	ADMISSION REQUIREMENTS .....	205
	Undertaking to Abide by the Rules .....	207
	Responsibility for individuals involved in business.....	208
	Notification of significant breach.....	208
	General Conduct of Clearing Participants .....	209
	Foreign Clearing Participants and other Clearing Participants with Overseas Activity .....	214
5	COMMITMENT TO SUPPORT OBLIGATIONS OF ASX CLEAR (FUTURES).....	215
6	WITHDRAWAL OF CLEARING PARTICIPANT COMMITMENT .....	218
7	SATISFACTION OF OBLIGATIONS OF ASX CLEAR (FUTURES) .....	219
8	FINANCIAL REQUIREMENTS .....	223
9	POSITION LIMITS .....	224
9A	REGULATION .....	225
	Introduction and Oversight of Regulatory Affairs .....	225
	ASX Clear (Futures) Investigation and Enforcement Function.....	226
	Exemptions .....	226
10	APPOINTMENT OF BOARD AS AGENT.....	227
	Automatic Suspension .....	227
	Interim Suspensions.....	228
	Conduct of Associated Parties .....	228
11	RESIGNATION .....	229
12	APPEALS .....	230

12A	TRANSITIONAL PROVISIONS – [DELETED] .....	230
12B	TRANSITIONAL PROVISIONS .....	231
	Transitional Provision Definitions .....	231
	Sanctions .....	231
13	ACCESS TO RECORDS .....	233
14	AMENDMENT TO RULES .....	234
15	BOND AND REPURCHASE TRANSACTIONS.....	235
16	USE OF EXCHANGE SYSTEM.....	235
	Licence over Clearing Software.....	235
	Conditions of Licence.....	235
	Title to Licensed Software and Ownership of any Intellectual Property rights .....	237
	Warranty as to Title .....	237
	Intellectual Property Rights Indemnity .....	237
17	TERMS RELATING TO EXCHANGE EQUIPMENT .....	238
	Supply of Exchange Equipment .....	238
	Conditions of use of Exchange Equipment.....	239
	Title to the Exchange Equipment and Insurance Requirements .....	239
18	TERMS RELATING TO BOTH LICENSED SOFTWARE AND EXCHANGE EQUIPMENT .....	239
	Responsibility of ASX Clear (Futures) .....	239
	Responsibility for Security .....	240
	Termination of Licence.....	240
	Suspension of Licence .....	240
	Suspension to be Lifted.....	241
	Clearing Participant's Obligations on Termination of Licence .....	241
19	MISCELLANEOUS .....	241
	Notice, Notification and Service of Documents.....	241
20	RISK COMMITTEE .....	242
21	PRODUCT COMMITTEE .....	243

## PART 2 GENERAL

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### 3 ESTABLISHMENT OF ASX CLEAR (FUTURES)

3.1.1 These Rules relate to the Clearing and Settlement Facility operated by ASX Clear (Futures) Pty Ltd.

3.1.2 ASX Clear (Futures) may provide clearing facilities in accordance with the terms of these Rules.

#### **Fees**

3.2.1 The Board may impose the following fees in such amount as it may determine from time to time:

- (a) an application fee for admission as a Clearing Participant, which shall be applied against the cost of investigation into the suitability of the applicant and shall not be refundable to the applicant;
- (b) an admission fee;
- (c) an annual fee;
- (d) a transaction fee for each contract or transaction which is registered in the name of the Clearing Participant;
- (e) a fee for the acceptance of securities or collateral for Initial Margins or their realisation or renewal of such securities as collateral;
- (f) a fee for mandatory cash settlement and delivery or exercise of options;
- (g) a Clearing Infrastructure Fee;
- (h) a Support Fee if the Clearing Participant requires support as described in Rule 16, 17 or 18; and
- (i) such other fees as it may determine.

and may impose different fees on different categories of Clearing Participant.

Clearing Participants shall pay any fees so imposed, upon demand unless another time is specified. Fees payable pursuant to the Rules may be deducted by ASX Clear (Futures) from any credit balance of any account of the Clearing Participant with ASX Clear (Futures).

Amended Jan 05, 01/07/13

#### 3.2.2 Obligation to Pay Fees

- (a) Payment of annual fees shall be due on 1 January in each year or such other date as may be specified. Such annual fees shall be payable notwithstanding the suspension of a Clearing Participant's status and rights.
- (b) If a Clearing Participant fails to pay an annual fee within one (1) month of the due date its Participant status and rights shall, unless the Board or the Managing Director grants an extension of time for payment, thereupon be suspended until the sum due is paid together with interest from the due date at twelve per cent (12%) per annum or such other rate as may be fixed by the Board or the Managing Director from time to time. No such suspension shall release the Clearing Participant from its liability in respect

of its Commitment and no Commitment shall be liable to be returned except in accordance with Rule 6.

Amended 01/07/13

### 3.2.3 Monies Deposited with ASX Clear (Futures)

The Board may prescribe from time to time:

- (a) the interest rate which shall be payable with respect to monies on deposit with ASX Clear (Futures); and
- (b) the interest rate which shall be payable by Clearing Participants with respect to any monies which remain owing to ASX Clear (Futures) after the due time for payment.

ASX Clear (Futures) and Clearing Participants shall pay or receive such interest as the case may be. Subject to this provision any interest obtained by ASX Clear (Futures) from the investment of monies on deposit with ASX Clear (Futures) shall be monies to which ASX Clear (Futures) is absolutely entitled. Any monies so deposited may be invested as ASX Clear (Futures) sees fit and ASX Clear (Futures) shall not be liable for any failure to invest or to invest in a particular way.

### **Client Agreement Forms**

### 3.3 The Board or the Managing Director may prescribe minimum terms for agreements to be entered into between Clearing Participants and their clients and may amend those terms from time to time.

Any prescriptions and variations thereto made by the Board or the Managing Director shall for the purposes of the Corporations Act be deemed to be an amendment to the Rules of ASX Clear (Futures).

### **Disclosure of Information**

#### 3.4.1 Disclosure of information regarding Clearing Participants

ASX Clear (Futures) may, where it considers it appropriate disclose information regarding its Clearing Participants and their activities that are relevant to ASX Clear (Futures) to:

- (a) the Commission;
- (b) the Reserve Bank of Australia;
- (c) the Australian Prudential Regulation Authority;
- (d) the Exchange;
- (e) a Clearing & Settlement Facility; and
- (e) any governmental agency or regulatory authority.

Introduced 02/08/13

#### 3.4.2 ASX Clear (Futures) may disclose information

ASX Clear (Futures) will take all reasonable measures to protect from unauthorised use or disclosure information provided to ASX Clear (Futures) in confidence by or on behalf of a Clearing Participant pursuant to the Rules. For the purposes of this Rule the disclosure of information in the following circumstances does not constitute unauthorised use or disclosure:

- (a) pursuant to a Reciprocal Arrangement;
- (b) required to be disclosed by ASX Clear (Futures) under any law or any order of any court or tribunal, authority or regulatory body;

- (c) which at the time of disclosure to or by ASX Clear (Futures), was generally available to and known by the public;
- (d) for the purposes of monitoring compliance with, or the enforcement of, the Rules or the adjudication of those matters (including, without limitation, to the Old Tribunal (as defined in Rule 12B) or the Appeal Tribunal);
- (e) to a Related Body Corporate of ASX Clear (Futures), for the purpose of enabling that Related Body Corporate to assess whether the Participant is complying with, will comply with or has complied with the operating rules of, or any contractual arrangement with, that Related Body Corporate;
- (f) to an Approved Market Operator or Approved Settlement Facility, for the purpose of enabling the Approved Market Operator or Approved Settlement Facility to assess whether the Clearing Participant (or a Participant of the Exchange for whom the Clearing Participant clears Futures Contracts) is complying with, will comply with or has complied with the Approved Market Operator's or Approved Clearing and Settlement Facility's rules or procedures;
- (g) to any governmental agency or regulatory authority including, without limitation, an exchange (including, without limitation, an Approved Market Operator), market, clearing house or clearing and settlement facility (in Australia or elsewhere) which requests ASX Clear (Futures) to provide the information to it, in the proper exercise of its powers relating to:
  - (i) the order and good government of Participants; or
  - (ii) the efficient, honest, fair, competitive and informed trading, clearing and settlement of Futures Contracts (in Australia or elsewhere); and
- (h) any entity which provides financial backing or insurance to ASX Clear (Futures) for the purpose of enabling that entity to assess the risk to ASX Clear (Futures) or that entity from clearing activities generally or to assess any claim made in connection with a Clearing Participant's activities.

Introduced 02/08/13 Amended 11/02/14

## 4 ADMISSION REQUIREMENTS

4.1 Subject to Rules 4.4A and 4.5, ASX Clear (Futures) will admit an applicant as a Clearing Participant if the applicant:

- (a) applies to ASX Clear (Futures) by completing an application in the form prescribed by ASX Clear (Futures);
- (b) satisfies the Admission Requirements; and
- (c) pays to ASX Clear (Futures) the relevant application fee determined by ASX Clear (Futures).

Amended 15/06/15

4.2 For an applicant to be eligible for admission as a Clearing Participant, the applicant must satisfy ASX Clear (Futures) that it:

- (a) is a body corporate carrying on business in its own right and not in the capacity of a trustee of a trust;
- (b) holds an Australian financial services licence which authorises the applicant to carry on its business as a Clearing Participant (unless such a licence is not required by the Corporations Act);
- (c) is of high business integrity;

- (d) meets the Financial Requirements; and
- (e) has adequate resources and processes to comply with its obligations as a Clearing Participant under these Rules.

For these purposes, “resources” include financial, technological and human resources and “processes” include management supervision, training, compliance, risk management, business continuity and disaster recovery processes.

In assessing whether an applicant meets these requirements, ASX Clear (Futures) may have regard to the matters set out in the Procedures and to any other matters it considers appropriate.

Amended 15/06/15

- 4.3 ASX Clear (Futures) may request an applicant to provide such information as ASX Clear (Futures) considers necessary to establish whether the applicant satisfies the Admission Requirements.

Amended 02/01/02, 15/06/15

- 4.3A If an applicant is incorporated or intends to carry on any part of its business as a Clearing Participant outside Australia, then ASX Clear (Futures) may impose additional requirements for it to be eligible for admission as a Clearing Participant, including (but not limited to) those specified in the Procedures.

Introduced 15/06/15

- 4.4 Subject to Rule 4.4A, ASX Clear (Futures) will use all reasonable endeavours to make its decision whether to accept or reject an application for admission as a Clearing Participant within a reasonable time following the receipt of the application.

Amended 15/06/15

- 4.4A The decision as to whether to grant admission as a Clearing Participant is at the absolute discretion of ASX Clear (Futures). ASX Clear (Futures) may grant or refuse admission without giving any reasons.

Introduced 15/06/15

- 4.5 In addition to the condition referred to in Rule 4.7A, where ASX Clear (Futures) admits an applicant as a Clearing Participant, ASX Clear (Futures) may at that time, or at any later time, impose any conditions on the Clearing Participant which it considers appropriate. ASX Clear must notify the applicant or the Clearing Participant (as applicable) of any condition imposed under this Rule 4.5 in writing.

Amended 15/06/15

- 4.6 An applicant or Clearing Participant (as applicable) may appeal to the Appeal Tribunal against a decision of ASX Clear (Futures) not to admit it as a Clearing Participant or to impose a condition under Rule 4.5 in accordance with the provisions of the ASX Enforcement and Appeals Rulebook.

Amended 01/07/13, 15/06/15

- 4.7 Where ASX Clear (Futures) imposes a condition on the admission of a Clearing Participant under Rule 4.5, a breach of that condition by the Clearing Participant does not automatically result in the termination of the admission of the Clearing Participant. Any breach of a condition is dealt with in accordance with Part 7.

Amended 15/06/15

- 4.7A At the time when ASX Clear (Futures) admits an applicant as a Clearing Participant, or at any later time on the application of a Clearing Participant, ASX Clear (Futures) will impose a standard condition on the admission of the Clearing Participant that

specifies the category or categories of Market Contracts (including, if applicable, OTC Transactions) that the Clearing Participant is authorised to clear through ASX Clear (Futures).

Introduced 01/07/13

- 4.7B Any approval of ASX Clear (Futures) to authorise a Clearing Participant to clear a category or categories of Market Contracts does not take effect until the applicant has provided its Commitment to ASX Clear (Futures) as required by these Rules and, if applicable, the OTC Rules. Unless this requirement is satisfied within two months of the date of the approval by ASX Clear (Futures), or such further time as ASX Clear (Futures) may in its discretion allow, the approval lapses.

Introduced 01/07/13

- 4.8 Subject to these Rules, a Clearing Participant shall be entitled to have a Market Contract registered in its name, or receive an Allocation or Transfer, after it has to the reasonable satisfaction of the Board or Managing Director established all necessary financial, managerial, operational and appropriate complementary business continuity arrangements to carry out its obligations as a Clearing Participant in respect of the relevant category of Market Contract.
- 4.9 Recognition as a Clearing Participant is a privilege granted by the Board and subject to the Rules may be withdrawn by the Board for cause at any time. A Clearing Participant shall not purport to pledge or otherwise encumber its rights as a Clearing Participant and ASX Clear (Futures) shall not be required to recognise any trust in relation to any such rights.
- 4.10 The requirements of Rule 4.2 (a) to (e) are continuing. A Clearing Participant shall at all times ensure that these requirements are satisfied.

Amended 30/12/09, 01/07/13, 15/06/15

#### **Undertaking to Abide by the Rules**

- 4.11 (a) Subject to Rule 4.11(b), each Clearing Participant agrees to be bound by the Rules in its dealings with ASX Clear (Futures) and with each other Clearing Participant and each Clearing Participant agrees that the provisions of the Rules shall be binding on the Clearing Participant as between the Clearing Participant and ASX Clear (Futures) and as between the Clearing Participant and every other Clearing Participant. Each Clearing Participant shall also comply in full with any undertaking given, or condition imposed by the Rules. Further, each Clearing Participant must comply with any condition imposed by ASX Clear (Futures) on the admission of a Participant.
- (b) Rule 4.11(a) applies to each Clearing Participant that is a Facility Participant except to the following extent:
- (i) Rules 31 and 43 do not apply to a Facility Participant and to a Market Contract that becomes registered with the Facility Participant.
  - (ii) Rules 44, 45 and 47 do not apply to a Facility Participant where both the position of a Seller and the position of a Buyer under a Market Contract are registered with the Facility Participant.
- (c) Clearing Participants shall lodge with ASX Clear (Futures) on request from time to time, an undertaking in the form required by ASX Clear (Futures) and to the effect set out in Rule 4.11(a) duly signed by the Clearing Participant.

- (d) If ASX Clear (Futures) has not received an undertaking as referred to above signed by the Clearing Participant on the due date, the status and rights of the Clearing Participant will be suspended until the signed undertaking is received by ASX Clear (Futures). No such suspension shall release the Clearing Participant from its liability in respect of its Commitment and no Commitment shall be liable to be returned except in accordance with Rule 6.
- (e) A Clearing Participant has the primary responsibility for compliance with the Rules and shall ensure that its officers and representatives shall comply with them.
- (f) Where any Clearing Participant:
  - (i) undertakes any action, or course of actions which is contrary to a provision of the Rules or the Procedures; or
  - (ii) fails for any reason to act in accordance with a provision of the Rules, including, without limitation, failure to maintain any document or record, failure to give any notice or notification, or failure to comply with an undertaking or condition, required by or imposed under the Rules or the Procedures; or
  - (iii) fails to comply with or continue to comply with any requirement or condition for application for Participation Entitlements;
 then the Clearing Participant shall thereby have committed a breach of the Rules and/or the Procedures (as the case may be).
- (g) The ASX Enforcement and Appeals Rulebook form part of the Rules where relevant for the purposes of the Corporations Act.

Amended 04/12/02, 31/03/08, 30/12/09, 01/08/10, 01/07/13, 15/06/15

### **Responsibility for individuals involved in business**

- 4.11A A Clearing Participant is responsible for all actions and omissions of persons involved in its business as a Clearing Participant including, without limitation, its Employees.

Introduced 15/06/15

### **Notification of significant breach**

- 4.11B Where a Clearing Participant becomes aware that it has committed a breach of the Rules and/or the Procedures under Rule 4.11(f) and that breach is significant, the Clearing Participant must immediately notify ASX Clear (Futures).

For the purposes of determining whether a breach is significant a Clearing Participant must have regard to the following:

- (a) the number or frequency of similar breaches;
- (b) the impact of the breach on the Clearing Participant's ability to comply with any other Rule or Procedure or to conduct its business operations;
- (c) the extent to which the breach indicates that a Clearing Participant's arrangements to ensure compliance with the Rules and Procedures is inadequate;
- (d) the actual or potential financial loss to clients of the Clearing Participant, or the Clearing Participant itself, arising from the breach; and
- (e) any other matters specified by ASX Clear (Futures) from time to time.

Introduced 15/06/15



- 4.11C A Clearing Participant must ensure that all information which the Clearing Participant or its Employees give to ASX Clear (Futures) is complete, accurate and not misleading. If the Clearing Participant becomes aware that information which it, or its Employees, have given previously to ASX Clear (Futures) was incomplete, inaccurate or misleading, the Clearing Participant must promptly notify ASX Clear (Futures) In Writing.

Introduced 15/06/15

### **General Conduct of Clearing Participants**

- 4.12 (a) Clearing Participants shall at all times:
- (i) Act in a manner consistent with the promotion and protection of the goodwill and public image of ASX Clear (Futures) and its Clearing Participants.
  - (ii) Pay its debts as and when they fall due.
  - (iii) Comply in all respects with the Corporations Act and Rules and accept and act consistently with decisions of the Board, its Committees and the Business Conduct Committee.
- (b) Where the Operating Rules of Exchange purport to impose an obligation on a Clearing Participant, the Clearing Participant shall comply with that obligation as though it were an obligation created by, and included in, these Rules.
- (c) Clearing Participants shall at all times co-operate with ASX Clear (Futures), the Appeal Tribunal and ASX Clear (Futures) staff:
- (i) in complying with any conditions imposed on it under these Rules;
  - (ii) in complying with the Rules, directions and decisions and requirements of ASX Clear (Futures); and
  - (iii) in the performance of their respective duties imposed by ASX Clear (Futures) (including as may be affirmed or varied by the Appeal Tribunal (as the case may be following an appeal against such action) pursuant to the provisions of the ASX Enforcement and Appeals Rulebook) and Exchange Officials, Appeal Tribunals and ASX Clear (Futures) staff, in particular make available to those Appeal Tribunals or ASX Clear (Futures) staff its accounting and other records.

Amended 31/08/04, 30/12/09, 01/08/10, 11/02/14

- 4.13 No Clearing Participant shall:
- (a) Deal on behalf of a person other than in accordance with instructions accepted by the Clearing Participant from that person.
  - (b) Cheat, defraud, or deceive or attempt to cheat, defraud, or deceive any Client.
  - (c) Make or cause to be made to a Client a report, or enter or cause to be entered for a Client a record, which report or record the Clearing Participant knows (or ought reasonably to know) to be false.

Amended 15/06/15

- 4.14 Subject to Rule 4.15 it shall be the responsibility of each Clearing Participant:
- (a) To provide to ASX Clear (Futures) an annual audit certificate in the prescribed form within three (3) months of its financial year end unless the Clearing Participant is an ADI.

- (aa) To notify ASX Clear (Futures) In Writing if an auditor has identified a significant issue in an ASIC Form FS 71 or equivalent report lodged with the Commission pursuant to section 989B(3) of the Corporations Act.
- (ab) To notify ASX Clear (Futures) In Writing of:
  - (i) any changes to a Clearing Participant's financial year end, within 10 Business Days of the change taking effect; and
  - (ii) the appointment, removal or resignation of an auditor, no more than 10 Business Days after the event.
- (ac) Unless the Clearing Participant is an ADI, to provide to ASX Clear (Futures) annually in the manner and by the time set out in the Procedures, a copy of the Clearing Participant's group structure chart as at the preceding 30 June. The chart should show the Clearing Participant's corporate ownership structure from its ultimate holding company to the Clearing Participant and from the Clearing Participant to all of its subsidiaries (including any nominee company). It must also show the relationship between the Clearing Participant and any other entity with which it has inter-group balances.
 

If the Clearing Participant's group structure chart has not changed from the last version provided to ASX Clear (Futures), the Clearing Participant may satisfy this obligation by referring to the date on which that last version was provided to ASX Clear (Futures) and stating to ASX Clear (Futures) that the Clearing Participant's group structure chart provided to ASX Clear (Futures) on that date has not changed.
- (b) To provide to ASX Clear (Futures) a copy of any licence or approval granted to it by a regulatory authority to enable it to carry on its business as a Clearing Participant and to advise ASX Clear (Futures) immediately of any change to the licence or approval affecting its activities as a Clearing Participant.
- (c) To notify ASX Clear (Futures) In Writing of the following changes before they become effective:
  - (i) any change to the Clearing Participant's name, or any name under which the Clearing Participant carries on business as a Clearing Participant; or
  - (ii) any change to any address at which the Clearing Participant carries on business as a Clearing Participant.

The notice must include full details of the change.
- (d) To advise ASX Clear (Futures) In Writing within ten (10) Business Days of the appointment, resignation or removal of a director.
- (da) To notify ASX Clear (Futures) In Writing immediately if a person who is not a Controller becomes a Controller or a person who is a Controller ceases to be a Controller.
- (db) To notify ASX Clear (Futures) In Writing immediately if there is any other material change in information concerning its business as a Clearing Participant from that previously provided to ASX Clear (Futures).
- (e) If the Clearing Participant acts for any person other than itself or a Related Body Corporate, to effect and maintain professional indemnity (or equivalent) insurance, and to notify ASX Clear (Futures) of any notification to its insurer, in accordance with the Procedures.

- (ea) To:
- (i) submit to ASX Clear (Futures), in the manner and form set out in the Procedures, details of persons who are authorised by the Clearing Participant to sign documentation and to deal with clearing issues in connection with the operation of its business as a Clearing Participant; and
  - (ii) promptly notify ASX Clear (Futures) In Writing if any of the persons whose names are submitted under this Rule 4.14(ea) cease to be authorised by the Clearing Participant to sign the relevant documentation or to deal with clearing issues or if any new person is given that authority.

ASX Clear (Futures) is entitled to rely on the list referred to in Rule 4.14(ea)(i) as updated from time to time under Rule 4.14(ea)(ii) as evidence that the persons whose names are on the list at any given time are authorised to sign on behalf of the Clearing Participant documentation presented to ASX Clear (Futures) or to deal with clearing issues in connection with the operation of its business as a Clearing Participant.

Nothing in this Rule 4.14(ea) limits the persons whom ASX is entitled to assume are authorised by the Clearing Participant to sign documentation and to deal with issues in connection with the operation of its business as a Clearing Participant or the operation of Rule 4.11A.

- (f) To notify ASX Clear (Futures) In Writing immediately if the Clearing Participant becomes aware of any event or circumstance which adversely affects or may adversely affect its financial position or solvency or its ability to comply with the Rules or the Procedures.
- (g) To maintain internal records of instructions received from Clients and clearing services provided for Clients showing:
  - (i) the time and date of receipt of instructions;
  - (ii) the nature of the instructions received;
  - (iii) the time and date of transmission of instructions; and
  - (iv) the time and date of execution of instructions,for a period of not less than seven (7) years from the date of the service.
- (h) [Deleted]
- (i) To maintain such accounting records as correctly record and explain the transactions of the Clearing Participant and the financial position of the Clearing Participant and in addition will enable compliance with these Rules to be conveniently ascertained by ASX Clear (Futures), such records to be maintained in a form that will enable them to be conveniently and properly audited.
- (j) Before accepting a person as a Client, to have in force with such person an agreement duly signed by the Clearing Participant and the Client containing minimum terms to the following effect:
  - (i) Governing Law and Rules**

The Client and Participant are bound by the ASX Clear (Futures) Rules and the customs, usages and practices of ASX Clear (Futures) and the Exchange's Markets.
  - (ii) Client to Provide Information**

In relation to the Client's trading on the Exchange the Client will upon the Clearing Participant's request, provide all information and

documentation relevant to that trading, to the Clearing Participant and the Clearing Participant is authorised by the Client to provide the information and documentation to the Exchange and ASX Clear (Futures).

**(iii) Benefit to Participant of Contract Registration with ASX Clear (Futures)**

Any benefit or right obtained by any Clearing Participant upon registration of a contract with ASX Clear (Futures) by way of assumption of liability of ASX Clear (Futures) under any contract or any other legal result of such registration is personal to the Clearing Participant and the benefit of such benefit or right does not pass to the Client.

**(iv) Client only has Rights Against Participant**

In relation to all trades conducted on the Exchange by a Trading Participant and all Contracts registered by the Clearing Participant with ASX Clear (Futures) the Client has no rights whether by way of subrogation or otherwise, against any person or corporation other than the Clearing Participant.

**(v) Margins**

An acknowledgment by the Client that:

- (A) the Clearing Participant may call for payment of Margin such money or property (or Call for the lodgement of Approved Securities in lieu thereof) as the Clearing Participant, in its absolute discretion, feels is necessary to protect itself from the personal obligation incurred by Dealing in Contracts on behalf of the Client.
- (B) should the Client fail to meet the Call (or lodge Approved Securities) then the Clearing Participant may (without prejudice to any other rights or powers under the Agreement) in its absolute discretion, and without creating an obligation to do so, Close Out, without notice, all or some of the Client's Contracts.
- (C) the time for payment of Margins is of the essence and if no other time is stipulated by the Clearing Participant prior to calling a Margin then the Client is required to comply within twenty-four (24) hours.
- (D) liability to pay the Initial Margin accrues at the time the trade is executed regardless of when a Call is made.
- (E) liability to pay Margin accrues at the time the Margin comes into existence regardless of when a Call is made.
- (F) the Client is responsible to pay in cash any deficit owing to the Clearing Participant after closure and that if the Client defaults in payment of such deficit, the Clearing Participant may realise any securities held by the Clearing Participant and apply the proceeds against that deficiency.

**(vi) Appointment of Attorney**

An appointment by the Client of the Managing Director of ASX Clear (Futures) as the Client's attorney to do all things necessary to transfer any Open Position held by the Clearing Participant on the Client's behalf to another Clearing Participant where the

Clearing Participant status of the Clearing Participant has been suspended or terminated.

**(vii) Exchange Data**

An acknowledgment by the Client who has access to electronic order facilities that:

- (A) data made available to the Client by access to electronic order entry facilities is not the property of the Clearing Participant and remains the valuable property of the Exchange; and
- (B) the client is prohibited from publicly displaying, redistributing or re-transmitting the data in any way without having executed a Market Data Distribution Agreement or similar agreement with the Exchange.

**(viii) Tape Recordings**

An acknowledgment by the Client that the Client's telephone conversations with the Clearing Participant can be recorded by the Clearing Participant or the Exchange. The Client is to be given the right to listen to any recording in the event of a dispute or anticipated dispute.

**(ix) Right to Refuse to Deal**

An acknowledgment by the Client that the Clearing Participant reserves the right to refuse to Deal on behalf of the Client in relation to any Dealings in Contracts (other than closing out existing Open Positions held in the Clearing Participant's account on behalf of the Client) or limit the number of Open Positions held on behalf of the Client or both. The Clearing Participant will inform the Client of any refusal at or before the time of the Client placing the order or as soon as possible thereafter.

**(x) Termination and Closing Out**

An acknowledgment that:

- (A) without affecting any existing obligations or liabilities, either the Client or the Clearing Participant may terminate the agreement at any time by giving the other notice In Writing to that effect;
- (B) upon termination of the Client Agreement that unless otherwise agreed In Writing the Clearing Participant will Close out all the Client's Futures Contracts and Close Out, abandon or exercise any Options not yet exercised.

To the extent that the Client Protection Model Provisions apply to a Client, the terms addressing the requirements in Rule 4.14(j)(iii) and (iv) do not apply.

- (ja) Rule 4.14(j) does not apply where the Client is a Full Participant, in which case an agreement containing this term is deemed to have been entered and come into effect immediately upon the Clearing Participant accepting the first instruction from the Client to enter a contract on the Exchange's Markets and/or register a contract with ASX Clear (Futures);
- (k) To ensure that whilst such person is a Client an agreement as referred to in paragraph (j) above remains in force.
- (l) Not to permit any one Client (in which context the expression "Client" shall include all persons, Firms and corporations related to associated or

affiliated with the Client or otherwise financially dependent upon the Client) to represent such a percentage of the business operations of the Clearing Participant as may prejudice or diminish the ability of the Clearing Participant to meet its obligations under these Rules.

- (m) To notify ASX Clear (Futures) In Writing upon commencing or becoming aware that
  - (i) a Clearing Participant commences legal proceedings against, or has legal proceedings commenced against it by, another Clearing Participant, a Trading Participant, the Commission or other regulatory authority or a Client in connection with its role as a Clearing Participant; and
  - (ii) those legal proceedings may affect the operations of ASX Clear (Futures) or the interpretation of the Rules.
- (n) To notify ASX Clear (Futures) In Writing on or before the next Business Day, if the Clearing Participant is informed by the Commission or its delegates (or any other person authorised under the Corporations Act), an exchange, a market operator, a clearing and/or settlement facility or a regulatory body that action is being or may be taken against the Clearing Participant or any of its Employees that relates in any way to its activities as a Clearing Participant.
- (o) To notify ASX Clear (Futures) as soon as practicable if it is unable to communicate reliably with the Exchange System.

*Note: Clearing Participants should also refer to Rules 4.11B and 4.11C for self-reporting requirements.*

Amended 31/03/08, 02/11/09, 30/12/09, 01/07/13, 11/02/14, 15/06/15

#### **Explanatory Note**

Refer to [Procedure 4.14 Becoming a Clearing Participant](#).

- 4.15 ASX Clear (Futures) may dispense with or temporarily postpone compliance by the Clearing Participant with any of the provisions of Rule 4.14 upon such conditions (if any) as ASX Clear (Futures) sees fit.

Amended 31/03/08

#### **Foreign Clearing Participants and other Clearing Participants with Overseas Activity**

- 4.15A (a) A Clearing Participant that proposes to locate or relocate any part of its business as a Clearing Participant (including, without limitation, any Gateway or other means of communicating Clearing Messages to ASX Clear (Futures) or any Employees) outside Australia ("Overseas Activity") must comply with the requirements set out in the Procedures.
- (b) If a Clearing Participant is incorporated outside Australia or conducts any part of its business as a Clearing Participant outside Australia and:
- (i) any tax or duty of any kind would be liable to be paid by ASX Clear (Futures), a Related Body Corporate of ASX Clear (Futures) or any other person bound by these Rules (each an "Entity");
  - (ii) the Clearing Participant would be required by any law or regulation to withhold payment of an amount or deduct a tax or duty of any kind from an amount payable by it to any Entity; or

- (iii) an Entity or Entities are required by any law or regulation to withhold payment of an amount or deduct a tax or duty of any kind from an amount payable by the Entity or Entities,

in respect of any transaction or agreement between that Clearing Participant and any other Entity or Entities and that duty or tax would not be liable to be paid or would not be required to be withheld or deducted if the Clearing Participant were incorporated in Australia and conducting its business as a Clearing Participant wholly in Australia, then the Participant must disclose to each relevant Entity that the duty or tax may be payable, or withholding or deduction may have to be made, before the relevant transaction or agreement to which the duty or tax relates is entered into or instructions are accepted. The disclosure must be In Writing and include the nature of the duty, tax or withholding and the amount of the likely duty, tax or withholding or the appropriate rate of duty or tax.

- (c) Without limiting any other indemnity given by a Clearing Participant under these Rules, each Clearing Participant indemnifies ASX Clear (Futures) in respect of any loss or damage caused to ASX Clear (Futures) as a result of a failure by that Clearing Participant to observe the requirements of Rules 4.15A(a) – (c).
- (d) A Clearing Participant must ensure, even if part of its business as a Clearing Participant or some of its Employees are located outside Australia, that it has in place appropriate arrangements so that the Clearing Participant and ASX Clear (Futures) (and Related Bodies Corporate of ASX Clear (Futures)) can communicate with each other and receive each other's responses quickly on a day-to-day operational basis and so that the Clearing Participant can promptly comply with the Rules or a request of ASX Clear (Futures) (or a Related Body Corporate of ASX Clear (Futures)).
- (e) A Clearing Participant that is not incorporated or registered as a foreign company under the Corporations Act must:
  - (i) appoint an agent, approved by ASX Clear (Futures), which is resident in Australia for service of process in Australia generally (including, without limitation, by ASX and ASIC);
  - (ii) provide ASX Clear (Futures) as soon as practicable with a copy of any agent's acceptance of such appointment;
  - (iii) inform ASX Clear (Futures) of the intended effective date of any agent ceasing for any reason to act as agent for the Clearing Participant; and
  - (iv) if paragraph (c) applies, appoint as soon as practicable, and in any case before an outgoing agent ceases acting as agent for the Clearing Participant, a new agent, approved by ASX Clear (Futures).

Introduced 15/06/15

## 5 COMMITMENT TO SUPPORT OBLIGATIONS OF ASX CLEAR (FUTURES)

5.1 Each Clearing Participant shall provide a commitment to the financial support of the obligations of ASX Clear (Futures) in accordance with and subject to the Rules (the Commitment):

- (a) of such amount and for such term as is provided for in the Rules;
- (b) in cash or in such other form as the Board may allow; and

- (c) which may readily, unequivocally and irrevocably be applied to support and discharge the financial obligations of ASX Clear (Futures) under Open Contracts, in the event of a Default, in accordance with Rule 7.

5.2 Without limiting the generality of Rule 5.1 the Board may determine that the Commitment may be provided by the provision of securities or other collateral or in such other form as may be determined by the Board. The Board may prescribe limits on the securities or collateral which may be provided.

Amended 28/04/14

5.3 The Board may in its absolute discretion determine the value of any Commitment provided otherwise than in cash or irrevocable commitment to provide cash for the purpose of determining whether a Clearing Participant has provided a Commitment of an amount which satisfies the provisions of the Rules.

5.4 The Board may at any time require a Clearing Participant to alter the form of its Commitment in any way and the Clearing Participant shall effect such alteration forthwith or by such time as the Board requires. Failing such alteration the Board may realise or apply any security or collateral when in the opinion of the Board such alteration or realisation is necessary to ensure compliance with Rule 5.1.

5.5 Without limiting the generality of Rule 5.4 the Board may at any time require the provision of substitute or additional securities or collateral or such other form of Commitment as is necessary to satisfy the Board that the Commitment of the Clearing Participant is of an amount and form which meets the requirements of Rule 5.1. A Clearing Participant shall comply with such requirement.

Amended 11/02/14, 28/04/14

5.5A The Futures Commitment required from a Futures Participant is determined in accordance with Rule 5.6. The OTC Commitment required from an OTC Participant is determined in accordance with the OTC Rules. A Clearing Participant which is both a Futures Participant and an OTC Participant must comply with the Commitment obligations of a Futures Participant and of an OTC Participant.

Introduced 01/07/13

5.6 Subject to Rule 7.6 the Futures Commitment of a Futures Participant shall be:

- (i) A "Fixed Commitment" comprising:
- (A) A minimum Commitment of two million dollars (\$2,000,000) by each Futures Participant; or
  - (B) Where the Futures Participant is also a BRC Participant and engages in Futures Contracts and Options Contracts clearing and in Bond and Repurchase Clearing, a minimum Commitment of four million dollars (\$4,000,000) for that Participant.

Provided however that where a Futures Participant is a BRC Participant and engages only in Bond and Repurchase Clearing, paragraph (B) shall not apply and the minimum Commitment shall be two million dollars (\$2,000,000) in accordance with paragraph (A).

- (ii) An additional Commitment (the "Variable Commitment") by each Futures Participant sufficient to bring the total aggregate amount committed by Futures Participants under the Futures Commitment (FC) to an amount in dollars calculated in accordance with the following formula:

$$FC = d + (n \times \$2,000,000)$$

where:



- n = number of Futures Participants which are also BRC Participants (excluding those which cease clearing Futures Contracts and Options Contracts and which engage only in Bond and Repurchase Clearing); and
- d = one hundred million dollars (\$100,000,000) or such lesser amount determined by the Board calculated by reference to all Futures Participants' Open Positions (excluding OTC Open Positions) or Aggregate Initial Margins (excluding OTC Initial Margins) or on such other similar basis as the Board may determine.

The manner of calculation of the Variable Commitment shall be as Prescribed in the Schedules. For any period during which the total aggregate Fixed Commitments under sub-paragraph (i) are in excess of FC, no Variable Commitment shall be capable of being called pursuant to Rule 7.1. The Variable Commitment calculated in accordance with this sub-paragraph (ii) shall be recalculable at the intervals Prescribed in the Schedules.

For the purposes of this sub-paragraph (ii), in the case of BRC Participants the Variable Commitment may be determined by the Board at its discretion by reference to the value of Bond Transactions or Repurchase Agreements cleared by each BRC Participant (rather than by reference to Open Positions or Aggregate Initial Margins) or on such other similar basis as the Board may determine. In all other respects this sub-paragraph (ii) applies to BRC Participants.

The amount of the Futures Commitment held by ASX Clear (Futures) may exceed the amount as determined in accordance with the foregoing in circumstances where a Futures Participant is admitted at a time other than the beginning of a new quarter.

Amended 01/03/08, 01/07/13

- 5.7 Each Clearing Participant shall provide by such time as Prescribed additional Commitment to ensure that its obligations under Rule 5.1 are met at all times. ASX Clear (Futures) may release a Clearing Participant's Commitment in whole or in part to enable the Commitment of a Clearing Participant to be reduced to that required by Rule 5.6. Where there is a Default the Commitment of a Clearing Participant shall notwithstanding this Rule 5.7 not be reduced below the Clearing Participant's liability or likely liability under Rule 7.5 and pending the finalisation of the Default procedures under Part 7 of the Rules the requirement of a Clearing Participant to provide a Commitment shall be adjusted accordingly.

Amended 01/07/13, 11/02/14, 01/10/15

#### **Explanatory Note**

The circumstances in which ASX Clear (Futures) may release a Clearing Participant's Commitment may be affected by the Recovery Rules.

- 5.7A Introduced 19/07/96 Deleted 01/10/15

- 5.8 ASX Clear (Futures) may in its absolute discretion pay each Clearing Participant an accommodation fee in respect of its Commitment in recognition of and to compensate for the assumption of risk by the Clearing Participant. Such fee shall be as determined from time to time by the Board with due regard for the risk, exposure and amount of the Commitment of a Clearing Participant and may be, set on different bases for different categories of Clearing Participants.

Amended 01/07/13, 01/10/15

- 5.9 ASX Clear (Futures) will pay a Clearing Participant interest on a Commitment provided in cash at the rate determined by ASX Clear (Futures) from time to time, provided that ASX Clear (Futures) may withhold any interest where in the opinion of the Board or Managing Director withholding such interest is necessary to ensure that the Clearing Participant is in compliance with Rule 5.1 and in such case such interest may be used by the Board as part of the Clearing Participant's Commitment.

Amended 01/07/13, 01/10/15

- 5.10 The Board may, with the agreement of a Clearing Participant and in addition to the obligation of a Clearing Participant to provide financial support under this Rule 5, obtain from a Clearing Participant additional financial backing to support the obligations of ASX Clear (Futures) on such terms as is agreed with the Clearing Participant.

- 5.11 The Board may, in its absolute discretion, waive the requirement for particular BRC Participants to make the Commitment under this clause 5.

- 5.12 Nothing in this Rule 5 limits the Recovery Rules.

Introduced 01/10/15

**Explanatory Note:**

The Recovery Rules may affect the operation of this Rule 5.

## 6 WITHDRAWAL OF CLEARING PARTICIPANT COMMITMENT

- 6.1 A Clearing Participant is not entitled to withdraw its Commitment, and ASX Clear (Futures) is not obliged to repay or transfer Commitment, except on the Clearing Participant's resignation of the authorisation to which the Commitment relates in accordance with Rule 11.1, or termination of its rights and status as a Clearing Participant in accordance with Rule 72.1(i) becoming effective.

Introduced 01/07/13 Amended 01/10/15

- 6.2 A Clearing Participant's Futures Commitment or OTC Commitment (as applicable) shall remain available for application by ASX Clear (Futures) in accordance with Rule 7 in respect of a Default by any Clearing Participant that occurs prior to the Clearing Participant's resignation of the relevant authorisation or termination becoming effective in accordance with Rule 11.1 or Rule 72.1A or the Recovery Rules (as applicable). ASX Clear (Futures) must not apply the Clearing Participant's Commitment in accordance with Rule 7 in respect of a Default by another Clearing Participant that occurs after the Clearing Participant's resignation or termination becomes effective.

Introduced 01/07/13 Amended 01/10/15

- 6.3 The Clearing Participant's Futures Commitment or OTC Commitment will be returned to it on the first Business Day of the New Quarter (as defined in Schedule 10) immediately following the date on which its resignation in respect of the relevant authorisation or termination is effective.

Introduced 01/07/13

- 6.4 Nothing in this Rule 6 limits the Recovery Rules.

Introduced 01/10/15

**Explanatory Note:**

The Recovery Rules may affect the operation of this Rule 6.

## 7 SATISFACTION OF OBLIGATIONS OF ASX CLEAR (FUTURES)

7.1 Without affecting ASX Clear (Futures)'s rights as otherwise provided in the Rules, upon Default by a Clearing Participant the Board shall be entitled, in satisfying ASX Clear (Futures)'s obligations, subject to Part 7 of the Rules, to apply the following assets in the order stipulated in whole or in part:

- (a) *first*, any moneys, securities, collateral or property held by ASX Clear (Futures) in any account of, or in respect of, the Clearing Participant in Default (including without limitation any amounts of variation margin or other amounts which would otherwise be payable to the Clearing Participant in Default and, subject to the provisions of Rules 41.5, 41.6 and 41.7, restricting access to a Client Clearing Account, a Client Clearing Account of the Clearing Participant in Default);
- (b) *second*, the proceeds of the Commitment (including all Futures Commitment and all OTC Commitment) of the Clearing Participant in Default;
- (c) *third*, any assets of ASX Clear (Futures) designated under the Procedures for the purposes of this paragraph up to the amount specified in the Procedures (such amount to be \$120,000,000 or such greater amount as the Board in its discretion may from time to time determine);
- (d) *fourth*:
  - (i) if the Clearing Participant in Default is a Futures Participant and is not an OTC Participant, the proceeds of the Futures Commitments of all Futures Participants (other than the Clearing Participant in Default) as provided by Rule 7.5, up to the total aggregate amount committed by all Futures Participants under the Futures Commitment (“**FC**”) calculated in accordance with the formula set out in Rule 5.6 (including the Commitment of the Clearing Participant in Default) (“**Relevant Futures Commitments**”);
  - (ii) if the Clearing Participant in Default is an OTC Participant and is not a Futures Participant, the proceeds of the OTC Commitments of all OTC Participants (other than the Clearing Participant in Default) as provided by Rule 7.5, up to the total aggregate amount of OTC Commitment committed by all OTC Participants calculated in accordance with the OTC Rules (including the OTC Commitment of the Clearing Participant in Default) (“**Relevant OTC Commitments**”);
  - (iii) if the Clearing Participant in Default is both a Futures Participant and an OTC Participant, an amount equal to the aggregate of:
    - (A) the Futures Commitment Proportion of the Relevant Futures Commitments; and
    - (B) the OTC Commitment Proportion of the proceeds of the Relevant OTC Commitments.

For this purpose:

“**Futures Commitment Proportion**” is the proportion calculated by dividing:

- (a) the daily average Initial Margin obligation of the Clearing Participant in Default that was attributable to Open Contracts other than OTC Open Contracts and OTC Allocated Futures Contracts

by:

- (b) the daily average Initial Margin obligation of the Clearing Participant in Default that was attributable to all of its Open Contracts (including OTC Open Contracts and OTC Allocated Futures Contracts).

“**OTC Commitment Proportion**” is the proportion calculated by dividing:

- (c) the daily average Initial Margin obligation of the Clearing Participant in Default that was attributable to OTC Open Contracts and OTC Allocated Futures Contracts

by:

- (d) the daily average Initial Margin obligation of the Clearing Participant in Default that was attributable to all of its Open Contracts (including OTC Open Contracts and OTC Allocated Futures Contracts).

For the purpose of each of the above calculations, the “**daily average Initial Margin obligation**” is calculated by dividing the sum of the Clearing Participant’s Initial Margin obligation for the relevant Open Contracts on each Business Day in the 90 days immediately preceding the day on which the Default first occurred by the number of Business Days in that period.

- (e) *fifth*, proceeds of any insurance or other assets available to ASX Clear (Futures) as designated for the purposes of this paragraph up to the amount specified in the Procedures (such amount to be \$150,000,000 or such greater amount as the Board in its discretion may from time to time determine) provided that in the case of any relevant policy of insurance the relevant excess has been exceeded;
- (f) *sixth*, proceeds of
  - (i) the Relevant Futures Commitments; and
  - (ii) the Relevant OTC Commitments,in each case to the extent that they have not already been applied above. If there is both Relevant Futures Commitments and Relevant OTC Commitments available to be applied then the allocation between them is to be conducted proportionally on the basis of the total amount of each of them which was available to be applied under this paragraph (f);
- (g) *seventh*, the proceeds of any additional financial backing of Clearing Participants as referred to in Rule 5.10;
- (h) *eighth*, any other monies or other assets available to ASX Clear (Futures) which have been designated under the Procedures for the purposes of this paragraph up to the amount specified in the Procedures (but excluding any other assets of ASX Clear (Futures) which have not been so designated); and
- (i) *ninth*, Recovery Assessments received from one or more Clearing Participants.

A Commitment cannot be applied by ASX Clear (Futures) to discharge, or to compensate ASX Clear (Futures) for discharging, an obligation incurred before ASX Clear (Futures) makes its determination under Rule 5.1 to require the Commitment.

Amended 15/07/11, 01/07/13, 11/02/14, 01/10/15

7.1A ASX Clear (Futures) may choose to aggregate the obligations it has incurred in respect of the Defaults of multiple Clearing Participants in Default during a Default

Period and apply the assets referred to in Rule 7.1 to satisfy those aggregated obligations if ASX Clear (Futures) determines that it would be appropriate to do so.

If ASX Clear (Futures) does not choose to aggregate the obligations it has incurred in respect of the Defaults of those Clearing Participants in Default during a Default Period, ASX Clear (Futures) will, in satisfying its obligations, apply the assets referred to in Rule 7.1 separately and consecutively in respect of each Clearing Participant in Default.

Introduced 01/10/15

- 7.1B ASX Clear (Futures) may apply the assets referred to in Rule 7.1 to satisfy its obligations irrespective of whether it has finally determined its obligations in respect of a Clearing Participant in Default or Clearing Participants in Default.

Introduced 01/10/15

- 7.2 To enable ASX Clear (Futures) to meet its obligations in a timely manner to Clearing Participants not in Default:

- (a) Pending the realisation of any part of the assets referred to in Rule 7.1 the Board may borrow or otherwise seek accommodation or make other financial arrangements as it sees fit.
- (b) Pending recovery of an asset in a paragraph of Rule 7.1 access may be had by ASX Clear (Futures) to assets referred to in a subsequent paragraph of Rule 7.1 subject to prompt adjustment when an asset in a preceding paragraph has been recovered PROVIDED THAT no access shall be had to the assets referred to in:
  - (i) paragraphs (d) or (f) of Rule 7.1 until the assets referred to in paragraph (c) have been exhausted; and
  - (ii) paragraph (f) of Rule 7.1 until the assets referred to in paragraph (e) have been exhausted,

AND PROVIDED FURTHER that ASX Clear (Futures) shall not be required to have access to assets referred to in a paragraph of Rule 7.1 pending the realisation of available assets referred to in a preceding paragraph.

Amended 15/07/11, 01/07/13, 11/02/14

- 7.3 Any application of monies or assets, whether permitted by Rule 7.1 or any other provision of these Rules, shall not preclude or limit ASX Clear (Futures) from seeking recovery from the Clearing Participant in Default or Clearing Participants in Default of any amount properly payable by that Participant or Participants including, without limitation, any Commitment.

- 7.4 The Board shall have absolute discretion to determine whether to seek recovery in accordance with Rule 7.3. However, if any one or more of the Non-Defaulting Clearing Participants, or entities which have resigned from being a Clearing Participant (excluding any Clearing Participant in Default), who are Contributors under the Recovery Rules provides ASX Clear (Futures) with:

- (a) an indemnity of any payment, liability or obligation which ASX Clear (Futures) may thereby incur, in such form as the Board may prescribe; and
- (b) security for the costs of ASX Clear (Futures) in the form and in an amount as advised by the Board,

then the Board shall proceed to seek recovery in accordance with Rule 7.3, except where the Board resolves that to do so would be contrary to the best interests of

ASX Clear (Futures) or the Clearing Participants, or to the maintenance of an orderly and fair market.

Amended 01/10/15

- 7.5 For the purposes of Rule 7.1(d) and (f), ASX Clear (Futures) shall be entitled in satisfying its obligations to call in full or in part any Commitment up to the total amount committed by a Clearing Participant. Such call to be calculated as follows:

**Futures Commitment of Futures Participants**

- (a) Until the Fixed Commitment of the Futures Commitment of each Futures Participant is exhausted a call or calls on Futures Commitments of Futures Participants shall be met equally by Futures Participants.
- (b) Once the Fixed Commitments of the Futures Commitment of Futures Participants have been exhausted then any further call or calls or part of a call or calls against the Futures Commitment shall be met by Futures Participants in the same proportion as their Variable Commitment as at the date of the Default bears to the Variable Commitments of all non-defaulting Futures Participants. If the Futures Commitment of any Futures Participant is exhausted then any remaining liability shall be shared on the same basis between the remaining Non-defaulting Futures Participants.

**OTC Commitment of OTC Participants**

- (c) Until the Fixed OTC Commitment of each OTC Participant is exhausted a call or calls on Fixed OTC Commitments of OTC Participants shall be met equally by OTC Participants.
- (d) Once the Fixed OTC Commitments of the OTC Participants have been exhausted then any further call or calls or part of a call or calls on the OTC Commitment shall be met by OTC Participants in the same proportion as their Variable OTC Commitment as at the date of the Default bears to the Variable OTC Commitments of all Non-defaulting OTC Participants. If the OTC Commitment of any OTC Participant is exhausted then any remaining liability shall be shared on the same basis between the remaining Non-defaulting OTC Participants.
- (e) However if the OTC Rules provide for a different order of application, or manner of sharing, between OTC Participants of their Fixed OTC Commitment and Variable OTC Commitment then the OTC Rules are to be complied with.

Where Commitments or any part thereof of a Clearing Participant or Clearing Participants are utilised under this or any other provision of the Rules in satisfying the obligations of ASX Clear (Futures), subject to Rule 73.4, ASX Clear (Futures) shall be under no obligation to return or repay to the Clearing Participant any Commitment or any monies, securities or property constituting such Commitment or an amount equivalent thereto to the extent that they are so utilised.

Amended 03/06/97, 15/07/11, 01/07/13, 11/02/14

- 7.6 Amended 01/07/13 Deleted 01/10/15

- 7.7 The application of any of the assets referred to in Rule 7.1 with respect to a Default or Defaults shall not preclude the use of any remaining assets in any subsequent Default or Defaults.

- 7.8 The Board may in its absolute discretion designate particular assets of ASX Clear (Futures) for the purposes of Rule 7.1(c), (e) and (h) and may add to or vary such designated assets as it sees fit from time to time.  
Amended 01/10/15
- 7.9 The Board may in its absolute discretion without being under any express or implied obligation to do so elect to meet any Default from assets available pursuant to paragraph (h) of Rule 7.1 and determine that such assets shall replace the obligation to apply assets referred to in any or all of paragraphs (d), (e), (f) or (g) of Rule 7.1.  
Amended 01/07/13
- 7.10 The Board will review the size, structure and composition of ASX Clear (Futures)' financial resources and certain matters expressly designated to be reviewed in the Recovery Rules, taking into account any recommendations made by the Risk Committee, changes (including anticipated changes) in ASX Clear (Futures)' regulatory obligations and any other matters considered relevant by the Board. The Board will conduct its review once in every successive period of 12 months following the effective date of this rule. The results of the review will be published.  
Introduced 01/07/13 Amended 01/10/15
- 7.11 Nothing in this Rule 7 limits the Recovery Rules.  
Introduced 01/10/15

**Explanatory Note:**

The Recovery Rules may affect the operation of this Rule 7.

## 8 FINANCIAL REQUIREMENTS

- 8.1 A Clearing Participant shall at all times comply with the Financial Requirements from time to time determined by ASX Clear (Futures) and set out in the Schedules.  
Amended 02/08/13
- 8.2 Without affecting the generality of Rule 8.1 the Board may prescribe financial requirements relating to:
- (a) the minimum level of each Clearing Participants' Net Tangible Assets; and
  - (b) the amount of Net Liquid Assets to be held by each Clearing Participant.
- 8.3 The Board or the Managing Director, or the delegate of either may determine that the Financial Requirements of a particular Clearing Participant shall be in excess of those applying pursuant to Rule 8.1 having regard to the number or value of Open Contracts held by the Clearing Participant, the Board, or the Managing Director or their delegate's assessment of the Clearing Participant's risk under such Open Contracts, the requirement of insurers or without limitation any other relevant factor and the Financial Requirements of that Clearing Participant shall be deemed to be Prescribed accordingly.
- 8.4 A Clearing Participant shall lodge with ASX Clear (Futures) in the Prescribed form a statement of its financial position as at the end of each month by no later than the Prescribed date or such other date as the Board may require.
- 8.5 (a) A Clearing Participant shall immediately advise ASX Clear (Futures) if:
- (i) the value of its financial position at any time is less than 150% of the Financial Requirements;

- (ii) the value of the Participant's financial position is less than 150% of the Financial Requirements and has decreased by more than 20% since the last advice provided to ASX Clear (Futures) pursuant to sub-paragraphs (a) or (b) hereof;
  - (iii) its financial position has varied such that it exceeds the Position limits prescribed pursuant to Rule 9;
  - (iv) its financial position has altered in such circumstances as are Prescribed in the Schedules.
- (b) The Clearing Participant shall also provide such additional statement or statements of its financial position, in such form or forms as ASX Clear (Futures) may require, at such time or times as it may direct.

Amended 11/02/14, 15/06/15

**8.6 Financial Requirements for OTC Participants apply in accordance with the OTC Rules.**

Introduced 01/07/13

**8.7 A Clearing Participant must prepare its accounts and returns in accordance with accounting standards issued by the Australian Accounting Standards Board unless ASX Clear (Futures) approves or prescribes otherwise.**

Introduced 02/08/13

**9 POSITION LIMITS**

- 9.1 (a) The Board may Prescribe limits on the number of Open Positions (whether Client Positions or House Positions) a Participant may hold in any Futures Contract or OTC Transaction or Options Contract or Bond Positions or Repurchase Agreements or on any market.
- (b) The Board may prescribe limits relating to the exposure of the Clearing Participant under Open Contracts by reference to:
- (i) the initial and/or variation margin and/or daily settlement liability of the Clearing Participant;
  - (ii) the number of Open Positions held by a Clearing Participant in any Futures Contract or OTC Transaction or Options Contract or Bond Positions or Repurchase Agreements;
  - (iii) the financial position of the Clearing Participant; or
  - (iv) any other criteria relating to the Clearing Participant's Open Positions or exposure as the Board thinks fit.

Amended 01/07/13

**9.2 The Board may require a Clearing Participant to comply with special limits having regard to any requirements of insurers to ASX Clear (Futures) or such other matters as it sees fit.**

**9.3 Where a Clearing Participant's position is in excess of or appears likely to exceed the limits applicable to that Clearing Participant pursuant to Rule 9.1 or 9.2 the Board or the Managing Director or his delegate may in its or his absolute discretion do, without being limited to such actions, all or any of the following:**

- (a) Determine that the Clearing Participant shall lodge additional Initial Margin with respect to all or any Open Positions held by the Clearing Participant of such amount as the Board or the Managing Director or his delegate may determine.



- (b) Direct that the Clearing Participant reduce the number of its Open Positions so as not to exceed such limits.
- (c) Direct that the Clearing Participant transfer all or any Open Contracts to another Clearing Participant. In the case of Bond Transactions or Repurchase Agreements such transfer may only be to a BRC Participant.
- (d) Refuse to register further Market Contracts on behalf of the Clearing Participant or accept any Allocation or Transfer to the Clearing Participant.
- (e) Exercise the powers set out in Rule 72.1(d) or (g) as if there were a Default.
- (f) Declare the Participant to be in Default.

and a Clearing Participant shall do all things necessary to give effect to any such determination, direction or decision by such time as is required by the Board.

Amended 19/07/96

- 9.4 Without in any way limiting its powers under Rule 9.3 the Board may at any time determine in relation to a Clearing Participant or Clearing Participants the requirements which will apply pursuant to Rule 9.3 in the absence of any other determination under Rule 9.3 should the relevant Clearing Participant be in breach of the applicable limits or appear likely to be in breach of such limits.
- 9.5 ASX Clear (Futures) shall immediately advise the Exchange and any Related Exchange of any determination pursuant to Rule 9.3 or 9.4.
- 9.6 The Board may Prescribe in the Schedules requirements which shall apply to Clearing Participants upon the breach of applicable limits of a Clearing Participant in the absence of any determination pursuant to Rule 9.3 or 9.4. Such requirements may include any of the matters referred to in Rule 9.3.
- 9.7 A Clearing Participant shall comply with all requirements and limits Prescribed by the Board under this Rule 9.

## 9A REGULATION

### Introduction and Oversight of Regulatory Affairs

- 9A.1.1 ASX Clear (Futures) shall undertake the detection, investigation and determination of potential and alleged breaches of the Rules and the provision of fair procedures and the taking of enforcement action in relation thereto.  
Amended 01/08/10
- 9A.1.2 To assist it in doing so ASX Clear (Futures) may appoint agents, which may include officers and committees of bodies corporate which are related to ASX Clear (Futures). Subject to any right of appeal, Clearing Participants shall comply with decisions of agents of ASX Clear (Futures) as though they were decisions of the Board, and any failure to comply shall be deemed to be a breach of these Rules.  
Amended 02/01/02, 31/03/08
- 9A.1.3 In the event that ASX Clear (Futures) appoints agents, those agents shall be responsible to the Chairman of ASX Clear (Futures) or his delegate for the efficient and effective performance of their functions and shall, upon request, report on their activities to that person in such detail as that person may reasonably require.
- 9A.1.4 The appointment of such agents shall in no way limit the authority of the Board to deal ultimately with any and all violations of the Rules either on its own initiative or upon appeal.

- 9A.1.5 Certain investigations and hearings may be conducted by ASIC, as determined by agreement between ASX Clear (Futures) and ASIC.
- 9A.1.6 Where ASIC makes a finding regarding a breach of the Corporations Act, by a Clearing Participant, ASX Clear (Futures) may impose a penalty without further investigation of the matter by ASX Clear (Futures).
- 9A.1.7 In the case of a breach by a Clearing Participant of a provision of the Rules which was committed on its behalf in whole or in part by a Representative of the Clearing Participant it shall be deemed to be, or have been, committed by that Clearing Participant.

### **ASX Clear (Futures) Investigation and Enforcement Function**

- 9A.2 The functions of ASX Clear (Futures) referred to in Rule 9A.1 include:
- (a) such investigations as it sees fit;
  - (b) such investigations, as it sees fit, of any allegations by a Clearing Participant or any other person which it considers to warrant investigation;
  - (c) maintenance of a program of inspections of the records and operations of Clearing Participants for the purpose of ensuring compliance with, and detecting breaches of, the Rules and in particular ensuring that Clearing Participants have appropriate procedures in place to prevent the occurrence of such breaches;
  - (d) where practical and relevant, maintenance of a program for the monitoring of the markets for which ASX Clear (Futures) provides services, and Open Positions and Open Contracts held by Clearing Participants and their Clients;
  - (e) ensuring that Clearing Participants lodge Financial Statements as required by the Rules;
  - (f) taking action in accordance with the provisions of the ASX Enforcement and Appeals Rulebook where it considers that a breach of the Rules may have occurred;
  - (g) to co-opt the services of the auditors of ASX Clear (Futures) and such other persons as ASX Clear (Futures) may approve, to assist in its activities; and
  - (h) referring matters to ASIC where ASIC has jurisdiction over such matters or by agreement between ASX Clear (Futures) and ASIC.

Amended 31/03/08, 01/08/10, 01/07/13

### **Exemptions**

9A.3.1-7 Deleted – 31/03/08

- 9A.3.8 ASX Clear (Futures) may where it believes it to be just and equitable, and to the extent permitted by law, and on payment of the application fee (if any) prescribed by the Board, exempt a Clearing Participant or CPM Client or person or class of Clearing Participant or CPM Client from compliance with such provisions of the Rules and on such conditions as it sees fit, including conditions relating to the payment of fees or costs in relation to the monitoring of such exemption. ASX Clear (Futures) may, at any time, revoke such exemption. A breach of a condition imposed in respect of an exemption shall be deemed to be a breach of these Rules.

Any exemption granted to a class of Clearing Participant or CPM Client (but not an exemption granted to a specified Clearing Participant or CPM Client) shall, for the purposes of the Corporations Act, be deemed to be an amendment to the Rules.

Amended 31/03/08, 11/02/14

9A.3.9 Deleted – 31/03/08

## 10 APPOINTMENT OF BOARD AS AGENT

10.1-8 Deleted – 31/03/08

10.9 Each Clearing Participant and CPM Client shall be deemed to have irrevocably appointed each member of the Board jointly and severally as its duly authorised agent to do all things and execute all documents, in the name of the Clearing Participant or otherwise, necessary to transfer any Open Positions or Open Contracts held by that Clearing Participant in the circumstances described in clause 15 of Schedule 13 and in the case of a CPM Client, subject to the Client Protection Model Provisions.

The Board may nominate one of its members to take all action in the name of the Clearing Participant and to execute all documents and do all things necessary to give effect to such transfer.

Amended 11/02/14

### **Automatic Suspension**

10.11 A Clearing Participant shall automatically be suspended without a meeting of the Board being required, if:

- (a) the Clearing Participant is in Default;
- (b) the Clearing Participant is in breach of the Financial Requirements or the requirements of Rule 8.4 and fails to rectify that breach within 24 hours or such longer period as the Board in its absolute discretion may allow;

or

- (c) where a liquidator, receiver, receiver and manager or administrator or some other form of external management is appointed in respect of the property of the Clearing Participant or if the Clearing Participant or a partner of the Clearing Participant becomes bankrupt. Such suspension shall, unless the Board at its absolute discretion approves otherwise, continue for the duration of the liquidation or receivership, administration, bankruptcy or external management.

Amended 31/03/08

10.12 The suspension or termination of a Clearing Participant shall not affect any subsisting rights which the Board or ASX Clear (Futures) may have in respect of that Clearing Participant or the CPM Clients under the Rules or any subsisting obligations of the Clearing Participant or the CPM Clients to the Board or ASX Clear (Futures) under the Rules and in the case of a suspension shall not affect any continuing obligations of the Clearing Participant or the CPM Clients under the Rules.

Amended 11/02/14

10.13 A suspended Clearing Participant shall not except to the extent allowed by the Board or Managing Director in its or his absolute discretion be entitled to have Market Contracts registered in its name or to receive an Allocation or Transfer of an Open Contract and shall not be entitled to vote.

## Interim Suspensions

- 10.14 Notwithstanding any other provision of this Rule 10, the Board may, by unanimous resolution of those present at a meeting and entitled to vote and on the basis that it reasonably believes it is necessary to do so in the interest of the public, or ASX Clear (Futures), suspend a Clearing Participant pending the conduct of proceedings in accordance with this Rule 10. Such suspension shall not be for more than twenty-one (21) days but may be extended from time to time by a unanimous resolution of those present and entitled to vote at a subsequent meeting. Where a suspension is made pursuant to this provision, proceedings shall commence within twenty-one (21) days or within the period of any extension.
- 10.15 Deleted
- 10.16 Deleted – 31/03/08
- 10.17 Deleted – 01/07/13

## Conduct of Associated Parties

- 10.18 Where the Board reasonably believes that the character, reputation, business integrity, or financial probity or conduct of:
- (a) an Associated Company;
  - (b) a Representative of a Clearing Participant, or of an Associated Company;
  - (c) a former Representative of a Clearing Participant or of an Associated Company;
  - (d) any person who has, or who has in the past had, the capacity to exercise control over a Clearing Participant, or an Associated Company;
  - (e) any other person which the Board reasonably believes is associated with, or connected to, the Clearing Participant or an Associated Company; or
  - (f) a non-Clearing Participant in any way associated or connected with a Clearing Participant,

is such that the interests of the public or ASX Clear (Futures) or its Clearing Participants, are being prejudiced by reason of the behaviour of the entities listed in Rule 10.18(a)-(f), then the Board may, without prejudice to any other action it may take under the Rules, direct the Clearing Participant to cause the behaviour of its entities to cease. If the behaviour of the entities listed in Rule 10.18(a)-(f) does not cease, the enforcement action may be taken against the Clearing Participant in accordance with this Rule 10 as if the conduct was that of the Clearing Participant.

For the purposes of this Rule, an “Associated Company” is a company which is in any way associated with, or connected to, the Clearing Participant. Without limiting the generality of the foregoing, a company shall be deemed to be associated or connected with a Clearing Participant where one has the power, directly or indirectly, to control the other. Without limiting the generality of the term “control”, such control shall be deemed to exist where one holds twenty per cent (20%) or more of the issued share capital of the other or where a Director of one is a Director of the other.

Amended 01/08/10

- 10.19 Deleted – 31/03/08

## 11 RESIGNATION

- 11.1 (a) A Clearing Participant may give notice of resignation in respect of one or more of its authorisations to clear a category or categories of Market Contracts to ASX Clear (Futures). If it notifies that it is resigning all of its authorisations then it is taken to also notify its resignation as a Clearing Participant.
- (b) Subject to Rules 11.1(d) and (e), resignation is not effective unless:
- (1) the Clearing Participant has given notice of resignation in writing to ASX Clear (Futures); and
  - (2) ASX Clear (Futures) confirms to the Clearing Participant in writing that the Clearing Participant has satisfied the following conditions:
    - (A) it has performed all of its accrued obligations under the Rules (including but not limited to the payment of all fees);
    - (B) it is not the subject of any disciplinary proceedings or enforcement action within the jurisdiction of ASX Clear (Futures); and
    - (C) it has no Open Contracts applicable to the authorisation in respect of which it has given notice of resignation.

ASX Clear (Futures) will provide such confirmation, or reasons why such confirmation cannot be given, within 5 Business Days of receipt of a written request from a Clearing Participant which has given notice of resignation.
- (c) Subject to Rules 11.1(d) and (e):
- (1) resignation will be effective at the end of the last day of the quarter in which the Clearing Participant meets the conditions in (1) and (2) above, provided those conditions are met at least 30 days prior to the last day of the quarter; and
  - (2) if the Clearing Participant meets those conditions less than 30 days prior to the last day of the quarter, the Clearing Participant's resignation will be effective at the end of the last day of the following quarter. For these purposes, quarters are as defined in Schedule 10.
- (d) The confirmation by ASX Clear (Futures) that the Clearing Participant has satisfied the conditions in Rule 11.1(b)(2) or the effectiveness of the Clearing Participant's resignation does not affect any accrued rights which ASX Clear (Futures), a Related Body Corporate of ASX Clear (Futures), or other Clearing Participants have against the Clearing Participant or any accrued obligations which the Clearing Participant has to ASX Clear (Futures), a Related Body Corporate of ASX Clear (Futures) or to other Clearing Participants.
- (e) Without limiting Rule 11.1(d) above, following the Clearing Participant's resignation becoming effective:
- (1) the Rules continue to apply and ASX Clear (Futures) will continue to have jurisdiction in respect of the Clearing Participant concerning any conduct or any failure to comply with the Rules which occurred before the acceptance of the notice or termination of authority, whether that conduct or failure was by the Clearing Participant or by any other person for whose conduct the Clearing Participant was responsible;

- (2) the Clearing Participant continues to be bound by any indemnity given by the Clearing Participant under these Rules; and
- (3) other Rules continue to apply in respect of the Clearing Participant to the extent required to give effect to Rules 11.1(e)(1) and (2).

Amended 01/07/13, 01/10/15

**Explanatory Note:**

The Recovery Rules may impact on the operation of this Rule.

11.2 Deleted 15/06/15

11.3 Nothing in this Rule 11 limits the Recovery Rules.

Introduced 01/10/15

**Explanatory Note:**

The Recovery Rules may affect the operation of this Rule 11.

## 12 APPEALS

12.1 The following decisions may be appealed in accordance with the provisions of the ASX Enforcement and Appeals Rulebook:

- (a) the Board's decision to refuse an Applicant its application for Clearing Participant status; or
- (b) a decision of the ASX Clear (Futures) to issue an Enforcement Notice under Section 2 of the ASX Enforcement and Appeals Rulebook or any sanction imposed in the Enforcement Notice.

Amended 31/03/08, 01/08/10

12.2-5 Deleted – 31/03/08

12.6 If a notice of appeal is given in accordance with the ASX Enforcement and Appeals Rulebook, then pending a decision of the Appeal Tribunal unless the Appeal Tribunal otherwise determines:

- (a)
  - (i) any decision to refuse an application to become a Clearing Participant shall stand;
  - (ii) any suspension imposed by the Board or ASX Clear (Futures) shall remain in force;
  - (iii) where applicable, any termination of a Clearing Participant shall be deemed to be a suspension pending the decision of the Appeal Tribunal; and
- (b) where there has been a finding of a breach of the Rules and an imposition of a sanction by ASX Clear (Futures) under the ASX Enforcement and Appeals Rulebook:
  - (i) any monetary penalty imposed shall not be required to be paid.

Amended 31/03/08, 01/08/10

12.7-13 Deleted – 31/03/08

## 12A TRANSITIONAL PROVISIONS – [DELETED]

Introduced 31/03/08 Deleted 01/08/10

## 12B TRANSITIONAL PROVISIONS

### Transitional Provision Definitions

12B.1 For the purposes of this Rule 12B:

**"Commence"** means:

- (a) in relation to disciplinary proceedings relating to conduct or a failure prior to the Effective Time, the provision of a contravention notice by ASX Clear (Futures) to the Regulated Person pursuant to Rule 2.1 of the Old Australian Securities Exchange Disciplinary Processes and Appeals Rulebook; and
- (b) in relation to appeal proceedings relating to conduct or a failure prior to the Effective Time, the provision of notice of appeal by the relevant person pursuant to Rule 3.1 of the Old Australian Securities Exchange Disciplinary Processes and Appeals Rulebook.

**"Effective Time"** means the date of commencement of Schedule 1 to the Corporations Amendment (Financial Market Supervision) Act 2010.

**"Old SFE Clearing Rules"** means the SFE Clearing Rules in force before the Effective Time.

**"Old Australian Securities Exchange Disciplinary Processes and Appeal Rulebook"** means the Australian Securities Exchange Disciplinary Processes and Appeals Rulebook in force before the Effective Time;

**"Old Tribunal"** means the Disciplinary Tribunal or Appeal Tribunal (as the context requires) convened in accordance with the Old Australian Securities Exchange Disciplinary Processes and Appeal Rulebook, irrespective of whether it is convened before or after the Effective Time.

**"Relevant Person"** or **"Regulated Person"** means a Clearing Participant or a Representative or a person applying to ASX Clear (Futures) for admission as a Clearing Participant pursuant to Rule 4 of the Rules.

Introduced 01/08/10

### Sanctions

12B.2 Following the Effective Time:

- (a) ASX Clear (Futures) will have jurisdiction pursuant to Rule 9A.2(f) and the ASX Enforcement and Appeals Rulebook and may take any action under that rule or rulebook in respect of a Relevant Person concerning any conduct or failure under:
  - (i) these Rules, where that conduct or failure occurred on or after the Effective Time; or
  - (ii) these Rules and the Old SFE Clearing Rules, where the relevant conduct or failure the subject of the action spans both prior to and following the Effective Time,irrespective of when ASX Clear (Futures) became aware of, or should have become aware of, that conduct or failure;
- (b) the Appeal Tribunal will have jurisdiction pursuant to the ASX Enforcement and Appeals Rulebook and may conduct appeal proceedings (including the

holding of any hearings or engaging in any procedures) under those Rules in respect of a Relevant Person concerning any conduct or failure under:

- (i) these Rules, where that conduct or failure occurred on or after the Effective Time; or
- (ii) these Rules and the Old SFE Clearing Rules, where the relevant conduct or failure the subject of the proceedings spans both prior to and following the Effective Time,

irrespective of when ASX Clear (Futures) became aware of, or should have become aware of, that conduct or failure;

- (c) ASX Clear (Futures) will continue to have jurisdiction pursuant to Rule 9A.2(f) of the Old SFE Clearing Rules and the Old Australian Securities Exchange Disciplinary Processes and Appeals Rulebook and may take disciplinary action under that rule or rulebook after the Effective Time in respect of a Regulated Person concerning any conduct under or any failure to comply with the Old SFE Clearing Rules, where that conduct or failure occurred prior to the Effective Time, irrespective of when ASX Clear (Futures) became aware of, or should have become aware of, that conduct or failure;
- (d) the Old Tribunal shall continue to have jurisdiction to conduct disciplinary proceedings (including any appeal proceedings from those disciplinary proceedings) or appeal proceedings (as the case may be) in accordance with, and pursuant to its jurisdiction under, the provisions of the Old Australian Securities Exchange Disciplinary Processes and Appeal Rulebook in respect of a Regulated Person concerning any conduct under or any failure to comply with the Old SFE Clearing Rules, where that conduct or failure occurred prior to the Effective Time, irrespective of whether disciplinary or appeal proceedings have Commenced prior to the Effective Time or when ASX Clear (Futures) became aware of, or should have become aware of, that conduct or failure;
- (e) for the purposes of paragraphs (c) and (d) above:
  - (i) the maximum penalty that may be imposed on a Regulated Person shall be the maximum penalty that would have been imposed for the relevant conduct or failure under the rules in existence at the time that the relevant conduct or failure occurred, irrespective of whether the disciplinary proceedings or appeal proceedings (as the case may be) were Commenced before or after the Effective Time;
  - (ii) ASX Clear (Futures) and the Old Tribunal shall take disciplinary action and conduct the disciplinary proceedings or appeal proceedings (as the case may be) with due regard to the relevant rules that were in force at the time that they were alleged to be contravened;
- (f) the Old SFE Clearing Rules and the Old Australian Securities Exchange Disciplinary Processes and Appeals Rulebook continue to apply in respect of the Regulated Person to the extent required to give effect to the paragraphs above;
- (g) Nothing in this Rule 12B.2 limits the continued operation of rule 12A of the Old SFE Clearing Rules where disciplinary proceedings or appeal proceedings have Commenced (as defined in the Old SFE Clearing Rules) prior to the Effective Time (as defined in the Old SFE Clearing Rules).



- 12B.3 For the avoidance of doubt, where the relevant conduct or failure the subject of the action or proceeding spans both prior to and following the Effective Time:
- (a) ASX Clear (Futures) and the Appeal Tribunal will have the jurisdiction and may take action or conduct appeal proceedings as referred to in Rules 12B.2(a) & (b) above;
  - (b) Rules 12B.2(c), (d) and (e) do not apply to such conduct or failure.

Introduced 01/08/10

## 13 ACCESS TO RECORDS

- 13.1 A Clearing Participant shall provide ASX Clear (Futures) with immediate access to information and records concerning the Clearing Participant's trading and financial position, including the financial position of a related company if requested, whether for client or principal trading and ASX Clear (Futures) may itself inspect the records of the Clearing Participant or may appoint a person or persons to inspect the records on its behalf.

Amended 30/12/09

- 13.2 ASX Clear (Futures) may request the Exchange or any related company to provide any information in its possession concerning a Clearing Participant and may request the Exchange or any related company to conduct an inspection of the Participant, or to appoint a person or persons to conduct an inspection, to assist ASX Clear (Futures) to obtain information for the purposes of Rule 13.1.

Amended 30/12/09

- 13.3 ASX Clear (Futures) shall provide to the Exchange or any related company, information concerning a Clearing Participant and Open Positions held by that Clearing Participant as may reasonably be required by the Exchange or any related company as the case may be from time to time. Where such information includes information concerning or arising from Market Contracts traded on a market of an exchange other than the Exchange making the requirement then ASX Clear (Futures) may decline in its absolute discretion to provide such information if it reasonably believes that such request is not made in accordance with an information sharing agreement between the Exchange and any related company.

Amended 30/12/09

- 13.4 ASX Clear (Futures) shall provide to relevant Australian regulation authorities and to the Securities Commission of New Zealand all information requested by the authority or Commission in the performance of its duties relating to the operations of ASX Clear (Futures) or a Clearing Participant and Open Positions held by that Clearing Participant.

- 13.5 ASX Clear (Futures) may provide information about the Clearing Participant and its Clients (including information about the Clearing Participant's and its Clients' trading and financial position) to a trade repository (whether located in Australia or in a foreign country). Clearing Participants must obtain any necessary consents (including from their Clients) to permit ASX Clear (Futures) to make such disclosures to trade repositories. The reference to "trade repository" includes a derivative trade repository as defined under the Corporations Act.

Introduced 11/02/14

- 13.6 Except as provided by these Rules or as required by law ASX Clear (Futures) shall keep confidential information concerning Clearing Participants or Open Positions held by them and shall only disclose such information to any other party as provided by these Rules, as required by law or for the purposes of discharging any of its

functions or obligations under the Articles or the Rules including, without limiting the generality of the foregoing, the provision of information to any insurers to ASX Clear (Futures) or to a provider of delivery facilities or regulatory body. For the avoidance of doubt, "law" when used in this Rule includes the law of any relevant jurisdiction including Australia or New Zealand.

Amended 30/12/09, 11/02/14

## 14 AMENDMENT TO RULES

14.1 Subject to Rule 14.2A and 14.2B, ASX Clear (Futures) may amend these Rules from time to time.

Amended 01/07/13, 01/10/15

14.2 Deleted 01/10/15

14.2A ASX Clear (Futures) will provide reasonable notice to Clearing Participants of any proposed amendments to the Rules and Procedures prior to the amendments taking effect. However, any omission by ASX Clear (Futures) to give notice to one or more Clearing Participants does not affect the validity of any amendments to the Rules or Procedures.

Introduced 01/07/13

14.2B ASX Clear (Futures) will consult with the applicable Consulting Clearing Participants on any proposed changes to the Rules and Procedures set out in the following table, prior to submission of the amendments to the Commission in accordance with the Corporations Act, unless:

- (a) ASX Clear (Futures) is directed by any competent regulatory authority (whether or not located in an Australian or other jurisdiction) to amend the Rules or Procedures;
- (b) ASX Clear (Futures) considers, in good faith but otherwise in its discretion, that such amendment is to correct a manifest error; or
- (c) ASX Clear (Futures) considers, in good faith but otherwise in its discretion, that an amendment is required to comply with its CS facility license obligations or other applicable regulatory requirements (whether or not required under the laws of an Australian or other jurisdiction).

ASX Clear (Futures) may determine the form of such consultation, which may be by way of consultation with the Risk Committee.

<b>Rules and Procedures being amended</b>	<b>Consulting Clearing Participants</b>
Rules (other than OTC Rules), where the amendment affects a Clearing Participant ("Affected Clearing Participant")	All of the Affected Clearing Participants.
OTC Rules	All OTC Participants.
OTC Handbook, where ASX Clear (Futures) is of the view that the amendment is likely to have a material impact on Clearing Participants	All OTC Participants.

Procedures, Determinations and Practice Notes where ASX Clear (Futures) is of the view that the amendment is likely to have a material impact on a Clearing Participant ("Materially Affected Clearing Participant")	All of the Materially Affected Clearing Participants.
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Introduced 01/07/13 Amended 01/10/15

14.3 Amended 01/07/13 Deleted 01/10/15

14.4 Only ASX Clear (Futures) can change the Rules or OTC Rules.

Introduced 01/07/13

## 15 BOND AND REPURCHASE TRANSACTIONS

- 15.1 (a) Upon the registration of each Market Contract in the form of a Bond Transaction or upon registration of each Market Contract in the form of a Repurchase Agreement (each such case being referred to in this Rule 15 as a 'BRC Contract') with ASX Clear (Futures) such BRC Contract shall be extinguished and replaced by a BRC Contract with ASX Clear (Futures) in accordance with the Rules and the original parties shall be released from their obligations to each other.
- (b) All BRC Contracts referred to in paragraph (a) shall be between BRC Participants as principals and ASX Clear (Futures) shall not be obliged to recognise the interest of any party other than such BRC Participants and upon the registration of a BRC Contract with ASX Clear (Futures) ASX Clear (Futures) shall not be obliged to recognise the interest of any party other than the party to the BRC Contract with ASX Clear (Futures).
- (c) Where a BRC Contract is registered with ASX Clear (Futures), references in ASX Clear (Futures) Rules to the Buyer or Seller in a BRC Contract shall be read as references to the BRC Participant party to the BRC Contract with ASX Clear (Futures).
- (d) Where the BRC Participants to a BRC Contract wish to renegotiate or unwind a BRC Contract, they shall directly renegotiate between themselves and notify ASX Clear (Futures) of the agreed renegotiated details. ASX Clear (Futures) shall then amend the details of the BRC Contract. ASX Clear (Futures) shall not be liable to any person for loss or damage arising in relation to the making of any such amendment.

Amended 11/02/14

## 16 USE OF EXCHANGE SYSTEM

Introduced January 05

### **Licence over Clearing Software**

16.1 By meeting and continuing to meet the conditions set out in Rule 16.2, and subject to the Rules, a Clearing Participant is granted by ASX Clear (Futures) and continues to hold a non-transferable, non-exclusive Licence to use such part of the Clearing Software as is approved by ASX Clear (Futures).

### **Conditions of Licence**

16.2 The conditions of a Licence granted by ASX Clear (Futures) under Rule 16.1 are that the Clearing Participant must:

- (a) use the Licensed Software solely for purposes in the ordinary course of business directly related to the Clearing Participant's activities as a Clearing Participant;
- (b) pay the Clearing Infrastructure Fee and any Support Fee;
- (c) not breach any Intellectual Property rights of ASX Clear (Futures) or any other third party in relation to the Licensed Software;
- (d) use the Licensed Software only in accordance with the Rules;
- (e) not make or permit others to make any copy of the Licensed Software other than for back-up purposes and only in the ordinary course of its back-up procedures;
- (f) not sub-license or otherwise transfer, assign, disclose or otherwise make available or supply the Licensed Software, or any part, version, copy, adaptation, enhancement, amendment, modification or new release of the Licensed Software to any other person without the consent of ASX Clear (Futures);
- (g) not transfer the Licensed Software to or network it with any site other than the site authorised by ASX Clear (Futures) from time to time;
- (h) not use the Licensed Software to process the data of any third party for the purposes of the business of such third party, except in accordance with the Rules;
- (i) not change, modify, amend or alter the Licensed Software or permit, employ or contract any other party (other than ASX Clear (Futures) or a party authorised by ASX Clear (Futures)) to do so;
- (j) not remove or deface any identification of ownership of copyright, trade mark or other proprietary rights connected with the Licensed Software;
- (k) not reverse assemble, reverse compile, reverse engineer, adapt, alter, decompile, modify, unlock or permit, assist or cause any other person to reverse assemble, reverse compile, reverse engineer, adapt, alter, decompile, modify or unlock the Licensed Software;
- (l) not derive works from the Licensed Software which infringe the Copyright Act 1968 (Cth);
- (m) not use or permit the use of the Licensed Software by any persons not authorised to do so;
- (n) not attach to the Licensed Software any item which is not Exchange Equipment or equipment approved by ASX Clear (Futures);
- (o) not disseminate data or confidential information generated by the Exchange System to a third party or allow a third party access to the Exchange System for the purpose of dissemination of that data or confidential information to others;
- (p) install any enhancements or upgrades to the Licensed Software as ASX Clear (Futures) may from time to time direct;
- (q) upon ASX Clear (Futures) giving the Clearing Participant reasonable notice, allow ASX Clear (Futures) to effect any enhancements or upgrades to the Licensed Software as required by ASX Clear (Futures);
- (r) only use the Licensed Software on a site or sites as ASX Clear (Futures) may from time to time agree to in writing;
- (s) use the Licensed Software in accordance with any operating instructions supplied by ASX Clear (Futures) or by any other party on behalf of ASX Clear (Futures);

- (t) use all reasonable endeavours to prevent reckless or negligent use or wilful abuse of the Licensed Software;
- (u) bear all costs of repairing or replacing damaged Licensed Software where such damage results from negligent or reckless use or wilful abuse of the Licensed Software on the part of the Clearing Participant, its officers or agents;
- (v) notify ASX Clear (Futures) as soon as possible in the event of a breakdown of, or malfunction in, or defect in, the Licensed Software;
- (w) not permit any unauthorised software to be installed or loaded in conjunction with the Licensed Software.

#### **Title to Licensed Software and Ownership of any Intellectual Property rights**

- 16.3 (a) With the exception of the non-exclusive Licence granted pursuant to Rule 16.1, use by a Clearing Participant of the Exchange System will not confer upon the Clearing Participant any right, title or interest in the Licensed Software.
- (b) Ownership of any Intellectual Property Rights in:
- (i) The Licensed Software; and
  - (ii) any works within the meaning of the Copyright Act 1968 (Cth) derived from the Licensed Software,
- will vest or remain vested in ASX Clear (Futures) or the relevant Licensor or any other entity as ASX Clear (Futures) or its Licensor (as the case may be) may in their sole discretion elect.

#### **Warranty as to Title**

- 16.4 ASX Clear (Futures) warrants to each Clearing Participant to whom it grants a Licence in accordance with Rule 16.1 that it is authorised to grant the Licence and that the Clearing Participant is entitled to use the Licensed Software in accordance with the Rules.

#### **Intellectual Property Rights Indemnity**

- 16.5 (a) ASX Clear (Futures) agrees to indemnify each Clearing Participant to whom a Licence has been granted against any loss the Clearing Participant may suffer due to any claim by any third party that the use or possession by the Clearing Participant of the Licensed Software infringes any Intellectual Property right of that third party but only to the extent to which ASX Clear (Futures) is actually indemnified by its Licensors under the relevant licence agreements and provided that:
- (i) ASX Clear (Futures) is given notice of the claim as soon as practicable after receipt of a written claim by the Clearing Participant from any such third party;
  - (ii) ASX Clear (Futures) or its Licensors (as the case may be) are given complete control over such claim, and the Clearing Participant fully co-operates with ASX Clear (Futures) at ASX Clear (Futures)'s or its Licensor's reasonable expense in the conduct of such claim;
  - (iii) the Clearing Participant does not prejudice in any manner ASX Clear (Futures)'s or the Licensor's conduct of such claim;

- (iv) the claim is not based upon the use of the Licensed Software in a manner:
  - (A) not authorised under these Rules;
  - (B) for which the Licensed Software was not designed; or
  - (C) not in accordance with the documentation provided by ASX Clear (Futures) or its Licensors; and
- (v) ASX Clear (Futures) will not be obliged to indemnify the Clearing Participant for any claim of infringement based on the:
  - (A) use of an altered version of the Licensed Software unless such alteration was authorised in writing by ASX Clear (Futures);
  - (B) combination, operation or use of the Licensed Software with software, hardware, equipment or other materials not supplied by ASX Clear (Futures); or
  - (C) use of a superseded version of the Licensed Software where the Clearing Participant has failed to install an upgraded or enhanced version of the Licensed Software as directed by ASX Clear (Futures).
- (b) If a final injunction is obtained against the use of any part of the Licensed Software as a result of a claim under which ASX Clear (Futures) is obliged to indemnify the Clearing Participant under this Rule 16.5 and provided the Clearing Participant has fully complied with its obligations regarding any such claim, ASX Clear (Futures) may, at its absolute option and expense either:
  - (i) procure for the Clearing Participant the right to continue to use the Licensed Software;
  - (ii) modify the Licensed Software so that it becomes non-infringing;
  - (iii) replace the Licensed Software with software offering substantially similar functions; or
  - (iv) terminate the Licence without any further liability to the Clearing Participant.
- (c) The Clearing Participant agrees to indemnify ASX Clear (Futures) for any loss or damage ASX Clear (Futures) may suffer due to any claim by a third party for actual or alleged infringement of any Intellectual Property right arising out of the Clearing Participant's use of the Exchange System in any manner prohibited by the Rules. The maximum liability of the Clearing Participant to ASX Clear (Futures) under this paragraph (c) is \$50,000,000.

Amended 01/07/13

**Explanatory Note**

Refer to [Procedure 16 Use of Exchange Systems](#).

**17 TERMS RELATING TO EXCHANGE EQUIPMENT**

Introduced January 05

**Supply of Exchange Equipment**

- 17.1 (a) Any Exchange Equipment supplied to a Clearing Participant will be supplied, installed and serviced subject to the Clearing Participant complying with the conditions in Rule 17.2 and subject to the Rules.

- (b) The quantity and type of Exchange Equipment supplied pursuant to Rule 17.1(a) shall be as approved by ASX Clear (Futures).
- (c) Any equipment supplied by a Clearing Participant in lieu of Exchange Equipment must comply with specifications approved by ASX Clear (Futures) and, if ASX Clear (Futures) so determines, must be installed by ASX Clear (Futures).

### **Conditions of use of Exchange Equipment**

17.2 The conditions applicable to the supply and use of the Exchange Equipment by a Clearing Participant are that the Clearing Participant must:

- (a) pay the Clearing Infrastructure Fee and any Support Fee;
- (b) use the Exchange Equipment in accordance with any operating instructions supplied by ASX Clear (Futures) or by any other party on behalf of ASX Clear (Futures);
- (c) use all reasonable endeavours to maintain an environment suitable to keep the Exchange Equipment in effective working order and condition;
- (d) use all reasonable endeavours to prevent reckless or negligent use or wilful abuse of the Exchange Equipment;
- (e) bear all costs of repairing or replacing damaged Exchange Equipment where such damage results from negligent or reckless use or wilful abuse of the Exchange Equipment on the part of the Clearing Participant, its officers or agents;
- (f) notify ASX Clear (Futures) as soon as possible in the event of a breakdown of, or malfunction in, or defect in, the Exchange Equipment;
- (g) insure the Exchange Equipment to its full market value, such value to be advised in writing by ASX Clear (Futures);
- (h) not permit any unauthorised software to be installed or loaded onto the Exchange Equipment.

### **Title to the Exchange Equipment and Insurance Requirements**

- 17.3 (a) Title to the Exchange Equipment will remain with the Exchange and shall not pass to a Clearing Participant upon delivery of the Exchange Equipment to the Clearing Participant.
- (b) A Clearing Participant must effect and maintain adequate insurance cover with a reputable insurance company with respect to loss or damage to the Exchange Equipment and for any potential liability, loss or damage arising out of use of the Exchange Equipment and must produce on demand by ASX Clear (Futures) evidence of such insurance cover.

## **18 TERMS RELATING TO BOTH LICENSED SOFTWARE AND EXCHANGE EQUIPMENT**

Introduced January 05

### **Responsibility of ASX Clear (Futures)**

18.1 ASX Clear (Futures) will:

- (a) supply and service the Exchange Equipment and the Licensed Software in the Sydney central business district, or such other location(s) as ASX Clear (Futures) may designate in writing, in accordance with the installation and

servicing instructions for the Exchange Equipment and the Licensed Software or as otherwise provided by ASX Clear (Futures) from time to time;

- (b) subject to Rules 16.2(u) and 17.2(e), as soon as reasonably possible repair or replace damaged Exchange Equipment and Licensed Software;
- (c) liaise with the Clearing Participant concerning the Clearing Participant's requirements for Exchange Equipment and Licensed Software;
- (d) co-ordinate additions, reductions and relocations of Exchange Equipment and Licensed Software;
- (e) maintain an inventory of Exchange Equipment and Licensed Software and provide a copy of the same to the Clearing Participant upon reasonable request;
- (f) provide a facility for the Clearing Participant to report faults in the Exchange Equipment and Licensed Software to operational staff;
- (g) provide the Clearing Participant with upgrades or enhancements of the Licensed Software as and when they become available;
- (h) in consideration for payment by the Clearing Participant of Support Fee, provide the Clearing Participant with on-going support services during working hours (8.00 am to 5.00 pm Monday to Friday Sydney time), which will consist of:
  - (i) telephone support;
  - (ii) remote access support;
  - (iii) on-site support where ASX Clear (Futures) determines that support cannot be provided through the use of telephone support, or remote access capability.

### **Responsibility for Security**

- 18.2 A Clearing Participant will be solely responsible for the use of the Exchange System by any person not authorised by ASX Clear (Futures) or for any misuse, damage or destruction of the Exchange System resulting from the use of the Exchange System by the Clearing Participant.

### **Termination of Licence**

- 18.3 ASX Clear (Futures) may terminate a Licence granted under Rule 16.1 and the Clearing Participant's access to the Exchange System in the event that the Clearing Participant ceases to be a Clearing Participant under these Rules.

Amended 01/08/10, 01/07/13

### **Suspension of Licence**

- 18.4 ASX Clear (Futures) may suspend a Clearing Participant's access to the Exchange System in the event that:
- (a) the Clearing Participant has been suspended under these Rules or
  - (b) in the opinion of the Managing Director or his or her delegate, a physical emergency (as described in these Rules) occurs and the Managing Director (or in his or her absence, his or her delegate) or the Board, as the case may be, determines that such suspension is necessary to deal with the emergency;



- (c) except where such amount is disputed in good faith and without prejudice to any other rule relating to rights for late payment of fees in these Rules, the Clearing Participant fails to pay the Clearing Infrastructure Fee or any Support Fee within 30 days of the due date where ASX Clear (Futures) has issued a notice in writing to that effect to the Clearing Participant requiring payment, the Clearing Participant has failed to pay the amount set out in that notice within thirty days, ASX Clear (Futures) has issued a second notice, the Clearing Participant has failed to pay the amount set out in ASX Clear (Futures)'s second notice within a further seven days and the total amounts referred to in the second notice exceed 25% of the total amount due under that invoice.

### **Suspension to be Lifted**

18.5 If:

- (a) the Clearing Participant's suspension is lifted; or
- (b) a physical emergency ceases to exist; or
- (c) the Clearing Participant pays to ASX Clear (Futures) the amount referred to in Rule 18.4(c) as well as any other outstanding amount which has accrued from the date of the last notice issued by ASX Clear (Futures),

then ASX Clear (Futures) must immediately lift the suspension of the Clearing Participant's access to the Exchange System.

### **Clearing Participant's Obligations on Termination of Licence**

18.6 Upon termination of the Licence granted to it under Rule 16.1, a Clearing Participant will within 7 days of termination:-

- (a) cease use of the Exchange System, return all documentation relating to the Exchange System to ASX Clear (Futures) and certify in writing to ASX Clear (Futures) that it has complied with the foregoing;
- (b) return the Exchange Equipment and Licensed Software to ASX Clear (Futures); and
- (c) pay any outstanding Clearing Infrastructure Fee, Support Fee and other charges and expenses.

## **19 MISCELLANEOUS**

### **Notice, Notification and Service of Documents**

- 19.1 (a) If any Rule requires or permits the giving of notice of any matters to any person, the Rule requires or permits the giving to that person of a written document containing those matters.
- (b) Without limiting Rule 19.1 any notice to be given by a Clearing Participant to ASX Clear (Futures) must be given to the person holding the position notified by ASX Clear (Futures) to Clearing Participants and may be given in the manner set out in the Procedures. Any notice to be given by ASX Clear (Futures) to a person, firm or corporation may be given in the manner set out in the Procedures.
- (c) For the purposes of any Rule that requires or permits a document to be given to a person, whether the expression 'serve', 'give' or 'send' or any other expression is used, the document may be given, and will be taken to have been received, at the time and in the manner set out in the Procedures.

Nothing in this Rule 19.1(c) or the Procedures prevents documents being sent or given to, or served on, a person in any other manner required or permitted by law.

A Clearing Participant must acquire and maintain an operating e-mail system for the purposes of receiving notices under Rule 19.1(c).

If under these Rules ASX Clear (Futures) is to give notice to some or all Clearing Participants, accidental omission by ASX Clear (Futures) to give notice to one or more Clearing Participants does not affect the validity or enforceability of any resolution, decision, proceeding or act in connection with which the notice was to be given.

Introduced 01/01/12 Amended 11/02/14

## 20 RISK COMMITTEE

ASX Clear (Futures) will invite all Clearing Participants to participate in a Risk Committee subject to the procedures set out in the Procedures, for the purpose of consulting on:

- (a) changes of the risk model of ASX Clear (Futures);
- (b) changes to the procedures on a Default set out in Part 7 (Procedures on a Default) of these Rules or the total size, structure and composition of the amounts available under Rule 7 or the default management process as described in Schedule 3 (Default Management Process) of the OTC Rules;
- (c) proposed amendments to the Rules;
- (d) introducing new asset classes for clearing or by forming new products through combining existing products;
- (e) changes to the method to determine eligible margin or the methods to determine haircuts (provided that ASX Clear (Futures) will be entitled to make such changes without consultation of the Risk Committee in individual cases in the normal course of business);
- (f) changes to the admission criteria (including the required minimum capital) for new Clearing Participants;
- (g) policies of ASX Clear (Futures) which relate to membership approvals, positions or liquidity limits of Clearing Participants, and any proposed changes to those policies;
- (h) the process for the discontinuation of OTC Clearing (if applicable); and
- (i) all other matters which may have an impact on the risk management of ASX Clear (Futures) and its Clearing Participants.

ASX Clear (Futures) will invite Clients to participate in the Risk Committee in accordance with the Procedures.

Proposals and recommendations of the Risk Committee will be disclosed to the Board. ASX Clear (Futures) does not have any obligation to accept any proposal or recommendation made by, or take any action proposed by, the Risk Committee. However, it will provide reasons to the Risk Committee if it chooses not to follow any proposal or recommendation of the Risk Committee prior to taking, or not taking, any action.

Introduced 01/07/13 Amended 11/02/14

### **Explanatory Note**

Refer to [Procedure 20 – Procedures for the Risk Committee](#).

## 21 PRODUCT COMMITTEE

A Product Committee will be established if there are at least three (3) Clearing Participants willing to participate in the committee.

The Product Committee is established for the purpose of consulting with ASX Clear (Futures) on:

- (a) the types of OTC Transactions which are eligible for OTC Clearing and the other types of Market Contract which may be cleared through ASX Clear (Futures);
- (b) material amendments to the Rules; and
- (c) such other matters as ASX Clear (Futures) determines.

The procedures for the Product Committee are set out in the Procedures.

ASX Clear (Futures) will invite Clients to participate in the Product Committee in accordance with the Procedures.

Proposals and recommendations of the Product Committee will be disclosed to the Board. ASX Clear (Futures) does not have any obligation to accept any proposal or recommendation made by, or take any action proposed by, the Product Committee. However, ASX Clear (Futures) will provide reasons to the Product Committee if it chooses not to follow any proposal or recommendation of the Product Committee prior to taking, or not taking, any action.

Introduced 11/02/14

### **Explanatory Note**

Refer to [Procedure 21 – Procedures for the Product Committee](#).

22 to 29 Not in use.

**End of Section. Next page is no. 301.**