



# ASX clearing and settlement operating rules review and refresh

**Proposed amendments to:**  
**ASX Clear Operating Rules and Procedures**  
**ASX Settlement Operating Rules and Procedures**  
**Austraclear Regulations and Procedures**

May 2024



## Invitation to comment

ASX is seeking submissions in response to this consultation paper by Friday 12 July 2024.

Submissions should be sent to:  
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If you would like your submission, or any part of it, to be treated as confidential, please indicate this clearly in your submission. ASX may publish the non-confidential submissions it receives in whole or on a summary basis. Where a submission, or part thereof, is marked confidential ASX will consider publishing the content on a summarised and anonymised basis. Where ASX is required by a regulator or otherwise required by law to publish a submission it has received, ASX will use its best endeavours to advise the submitter ahead of the production of that submission.

ASX is available to meet with interested parties for bilateral discussions on these matters.

## Contacts

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# ASX clearing and settlement operating rules review and refresh

13 May 2024

## Introduction

### Overview

The RBA's September 2019 Assessment of the ASX Clearing and Settlement Facilities (**ASX CS facilities**) recommended that ASX periodically review the ASX CS facilities' operating rules and procedures to ensure that these are clear, understandable and consistent with industry standards and market protocols. In response to this recommendation, ASX established a clearing and settlement rules review and refresh process on a five year cycle comprising guiding principles and a program of work. The rule and procedure amendments proposed in this consultation are one part of that program of work and ongoing review.

In reviewing the operating rules and procedures of the ASX CS facilities ASX has used a number of guiding principles including:

- Benchmarking new and existing rules and procedures against peers and industry standards (where appropriate).
- Considering feedback from participants in relation to rules and procedures that could benefit from greater certainty and clarity.
- Identifying existing processes embedded in the rules that could be improved.
- Aligning the rules and procedures across the ASX CS facilities (where appropriate).

The purpose of this consultation is to obtain feedback on proposed amendments to the following ASX rulebooks:

- [ASX Clear Operating Rules and Procedures](#)
- [ASX Settlement Operating Rules and Procedures](#)
- [Austraclear Regulations and Procedures](#)

ASX's proposed amendments to the rules and procedures resulting from this review are outlined in this Consultation Paper and available via the links above.

Responses to this Consultation Paper should be submitted to ASX by Friday 12 July 2024.

A separate consultation covering the ASX Clear (Futures) Operating Rules and Procedures is available [here](#).

## 1. Key themes

The amendments proposed in this consultation relate to the key themes outlined below.

### 1.1. Reflecting current practice

Amendments are required to update the rules and procedures to reflect current practice (or practices that have evolved over time). These amendments have been identified as part of a 'business review' of the rules and procedures across the organisation. Examples include:

- **Reflecting ASX's refreshed operating model in the Procedures** - As a result of ASX's refreshed operating model, the post-trade operations function for ASX Clear is divided between the Markets business (ETOs and OTC Options (FlexClear)) and the Securities and Payments business (cash market). Changes have been made in the ASX Clear Procedures to reflect this bifurcation including the operational contacts for relevant products.

- **Updating times and processes that do not currently match the rules** - These changes include updating procedures for ASX Clear that relate to reinstatement of Derivatives CCP Contracts following close-out, and payments that may, for example, be impacted by late batch settlement. The Austraclear procedures for depositing securities in the Austraclear system have also been updated to reflect existing practices around the use of email and duplicate copies.

## 1.2. Enhancements to support continued compliance with the licence obligations of the ASX CS facilities

As a result of recent global benchmarking, default management fire drills and a review of clearability considerations ASX has identified several rule enhancements that it would like to make to support the continued compliance of the ASX CS facilities with their licence obligations. These include:

- introducing a new requirement for clearing participants to notify ASX Clear of the contact details of their primary and secondary contacts responsible for their compliance with requirements under the Recovery Rules and any changes to those details (refer to amended ASX Clear Procedure 4.7.1). This is required so that ASX Clear has current contacts in the event that it needs to call Recovery Assessments from clearing participants on an urgent basis. Similar amendments are proposed to the ASX Clear (Futures) Rules.
- introducing a new express power allowing ASX Clear to sell a defaulter's portfolio (refer to amended ASX Clear Rule 15.2.1(g)). A recent fire drill on ASX Clear has indicated that a sale (or auction) is likely to be a more efficient method of managing a default than using a default broker. ASX Clear intends to consult on an auction framework in the next 3-6 months.
- amending the existing power that ASX Clear has (in ASX Clear Rule 16.2.1) to take action or refrain from action or direct participants to take action or refrain from action if an undesirable situation or practice has developed to expressly recognise that ASX Clear may need to take action if an undesirable situation or practice develops that is contrary to the operation of fair and effective clearing and settlement facility or the reduction of systemic risk (in contravention of s821A(aa)-(a) of the Corporations Act 2001 (Cth)). This change aligns with existing powers that the ASX market licensees have that recognise their obligation to maintain a fair, orderly and transparent market and is also reflected in the operating rules of other global CCPs.<sup>1</sup>
- introducing a new requirement that participants provide an ASX CS facility with any information that the ASX CS facility reasonably requests within the time specified in the request (refer to ASX Settlement Rule 3.8A and ASX Clear Rule 1.8A). This requirement is consistent with the requirement imposed on participants by a number of global CCPs including CME, SGX, ICE Clear Europe and Hong Kong Clearing Corporation. For consistency and alignment, ASX is proposing to include this requirement in the rulebooks of both ASX CCPs and ASX Settlement.
- introducing new express powers allowing Austraclear to suspend or terminate a Participant, Participating Bank (PB) or Foreign Currency Settlement Bank (FCSB) where: (i) that entity's admission may involve Austraclear in material expense or legal proceedings; (ii) Austraclear determines the Participant, PB, FCSB or any of their clients is using or may use Austraclear to contravene any law, regulation, order or other measure Austraclear considers it is required to comply with; or (iii) Austraclear determines the Participant, PB or FCSB may cause Austraclear to breach any law, regulation order or other measure which Austraclear considers it is required to comply with (refer to amended Austraclear Regulation 3.10). These powers are consistent with the powers granted to a number of global CSDs under their legal and contractual frameworks, including Euroclear UK & International and Euroclear Bank.
- introducing a new express power allowing Austraclear to issue a direction to a Participant, PB or FCSB to take or refrain from taking, any and all action which Austraclear considers appropriate to resolve an emergency situation (refer to amended Austraclear Regulation 22.2). This power is consistent with the powers granted to other global FMI's under their legal and contractual frameworks, including New Zealand Clearing, DTCC and SGX.

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<sup>1</sup> For example, SGX is authorised to exercise certain emergency powers if it is necessary or desirable for ensuring a safe and efficient clearing facility or for proper management of systemic risk in the market: refer to Rule 2.34.1 of the [SGX-DC Clearing Rules](#).

- Introducing a new express power allowing Austraclear to require the withdrawal of a security from the Austraclear System where Austraclear considers there is non-compliance with the relevant anti-money laundering, terrorist financing or financial sanctions legislation (refer to amended Austraclear Regulation 10.2(1)(a)). This power is consistent with the powers granted to other global CSDs under their legal and contractual frameworks, including Euroclear UK.

### 1.3. Alignment for consistency

ASX is taking steps to align common elements across the ASX CS facility operating rules to promote consistency. This includes, for example:

- **Waiver powers** – ASX proposes to introduce a waiver power for Austraclear and to align the existing waiver powers of ASX Clear and ASX Settlement with the waiver powers of the ASX market operators.
- **Delegation of powers** – ASX proposes to align the delegation framework in the Austraclear Regulations with the approach taken by the ASX market operators, and ASX Clear and ASX Settlement. This means, for example, that Austraclear, rather than “the Committee” or “the Managing Director” will exercise various powers including accepting new Participants.
- **Independent expert report** – ASX proposes to make it clear that ASX Clear and ASX Settlement may appoint an independent expert (rather than only an accountant) for the purpose of establishing a participant’s compliance with the rules or technical and performance requirements. All independent expert reports and certifications are to be paid for by the relevant Participant. These changes align the frameworks with the rules of the ASX market operators,

### 1.4. Accuracy, transparency and clarity

ASX’s existing practice is to consult with participants in relation to material rule amendments impacting them. Currently this is only reflected in the ASX Clear (Futures) Operating Rules. To support ASX’s commitment to consultation and transparency, ASX intends to extend this consultation framework to the other ASX CS facilities (refer to ASX Settlement Rule 1.2A; ASX Clear Rule 1.2A; Austraclear Regulation 6.12).

ASX acknowledges that some of its operating rules and procedures are not as clear as they could be. ASX has sought to update definitions and consolidate in the procedures some matters previously provided as guidance (e.g. approved reasons for transferring Derivatives CCP Contracts in ASX Clear Procedure 13.1.1).

### 1.5. Deleting redundant rules

ASX is also taking this opportunity to delete redundant rules and procedures. This includes transitional arrangements that are no longer required, for example, the transitional arrangements relating to the old disciplinary tribunal in the ASX Clear Operating Rules, the ASX Settlement Operating Rules and the Austraclear Regulations. It also includes removing bank guarantees from the ASX Clear Collateral Procedures and removal of rules to reflect the decommissioning of the ASX World Link service in the ASX Clear and ASX Settlement Operating Rules. For completeness, we note that a separate exercise has recently been undertaken by ASX in relation to redundant rules and procedures for ASX Clear that related to futures products that it no longer clears and those changes were effective 19 February 2024.

## 2. Feedback requested

ASX seeks stakeholders’ view on the draft amendments in this consultation paper. Submissions should be made by Friday 12 July 2024.

ASX welcomes the opportunity to discuss the draft amendments with interested parties (refer to the contact details on page 2).