



## **ASX 24 OPERATING RULES**

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## SECTION 1 ACCESS TO THE MARKET

### ADMISSION OF TRADING PARTICIPANTS

- [1000] For an applicant to be eligible for admission as a Trading Participant, the applicant must lodge an application in the form prescribed by the Market Operator and satisfy the Market Operator that it:
- (a) is a body corporate carrying on business in its own right and not as a trustee of a trust;
  - (b) holds an Australian Financial Services Licence which authorises it to carry on its business as a Trading Participant (unless such a licence is not required by the Corporations Act);
  - (c) is of high business integrity;
  - (d) has adequate resources and processes to comply with its obligations as a Trading Participant under these Rules;
  - (e) has adequate resources and processes to prevent any action or inaction which might result in a market for a Product not being both fair and orderly;
  - (f) has adequate resources and processes to prevent any action or inaction which might interfere with the operational efficiency or proper functioning of the Trading Platform; and
  - (g) has in place and will maintain adequate clearing arrangements including, where relevant, a Clearing Guarantee from a Guarantor Clearing Participant.

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, the Market Operator may have regard to the matters set out in the Procedures and to any other matters it considers appropriate.

Amended 01/01/12, 15/06/15, 20/03/17

- [1001] An applicant proposing to be admitted as a Principal Trader must be proposing only to conduct Market Transactions on its own behalf.

Amended 15/06/15

- [1002] If an applicant is incorporated or intends to carry on any part of its business as a Trading Participant outside Australia, the Market Operator may impose additional requirements for it to be eligible for admission as a Trading Participant, including (but not limited to) those specified in the Procedures.

Amended 15/06/15, 20/03/17

#### Procedure 1000(a)

Deleted 15/06/15

#### Procedure 1000(c)

In order to satisfy the Market Operator that it meets Rule [1000](c), an applicant must provide to the Market Operator one of the following:

- (a) If the applicant is an ADI, the applicant must confirm to the Market Operator that it has in place a 'fit and proper' policy that meets the requirements of the Australian Prudential Regulation Authority Prudential Standard CPS 520.

The applicant must be able to provide evidence of that policy to the Market Operator upon request at any time.

- (b) If the applicant holds an Australian Financial Services Licence which authorises it to carry on business as a Trading Participant, the applicant must confirm to the Market Operator that it has in place measures to ensure its responsible managers are fit and proper persons, as required by ASIC Regulatory Guides 105 and 2 which are also applied to any of its directors who are not responsible managers.

The applicant must be able to provide evidence of those measures to the Market Operator upon request at any time.

- (c) In any other case, if the applicant is not an existing participant of the Approved Clearing Facility, the ASX market, or the ASX Clear or ASX Settlement clearing and settlement facilities, the applicant must provide a statutory declaration to the Market Operator in relation to itself and from each of its directors confirming that:

- (i) they have not been the subject of any previous bankruptcy, insolvency, receivership, administration, or similar event;
- (ii) they have not been charged with or convicted of any offences relating to dishonesty, fraud, financial markets-related conduct or money laundering;
- (iii) they have not been the subject of any fines, civil penalties, banning, suspension or other disciplinary measures for financial markets-related conduct;
- (iv) they have not been the subject of any disciplinary action or adverse mention in a report made by, or at the request of, any government or governmental authority or agency, the Commission, ASX, an Approved Clearing Facility, an Approved Settlement Facility, and any other exchange, market operator or clearing and/or settlement facility;
- (v) they have not been refused membership of any financial markets-related, legal or accounting professional organisation or had such a membership revoked;
- (vi) they have not had an application for Trading Participant status (or equivalent status) on another exchange or market refused; and
- (vii) they satisfy any other criteria determined by the Market Operator from time to time,

whether in Australia or elsewhere, or, if that is not the case, a statement to that effect and a detailed explanation of the circumstances involved.

The applicant must also consent to the Market Operator obtaining information on the credit worthiness of the applicant.

The Market Operator may also have regard to any other information in its possession from any source in assessing whether the applicant meets Rule [1000](c).

Amended 15/06/15, 20/03/17, 24/01/22

#### Procedure 1000(d)

In order to satisfy the Market Operator that it meets Rule [1000](d), an applicant must provide to the Market Operator on or before its admission as a Trading Participant a certification in the form prescribed by the Market Operator from time to time that the applicant has the resources and processes in place to comply with its obligations under the Rules.

For these purposes, "resources" and "processes" have the same meaning as in Rule 1000.

In providing this certification to the Market Operator the applicant must have regard to:

- the Rules;
- ASX 24 Operating Rules Guidance Note 1 *Admission as a Participant*;
- ASX 24 Operating Rules Guidance Note 9 *Offshoring and Outsourcing*;
- the standards expected of financial services licensees set out in ASIC Regulatory Guide 104 *AFS Licensing: Meeting the general obligations* and ASIC Regulatory Guide 105 *AFS Licensing: Organisational competence* (this applies even if the applicant does not hold an Australian Financial Services Licence);
- the standards expected of Trading Participants set out in ASIC Regulatory Guide 266 *Guidance on ASIC market integrity rules for participants of futures markets*; and
- any other matters specified in the form prescribed by the Market Operator for these purposes.

If required by the Market Operator, the applicant must be able to demonstrate to the satisfaction of the Market Operator, at any time, the basis on which the certification is or was provided.

Amended 15/06/15, 20/03/17, 24/01/22

#### Procedures 1000(e) and (f)

In order to satisfy the Market Operator that it meets Rule [1000](e) and (f), an applicant must demonstrate to the satisfaction of the Market Operator that:

- (a) it complies with the technical specifications prescribed by the Market Operator from time to time;
- (b) it has arrangements for connectivity to the Trading Platform;
- (c) it will have, at all times, a nominated person readily available for the Market Operator to contact with the requisite competency and authority to make decisions as a representative of the Trading Participant regarding its trading; and
- (d) it has clearing arrangements in place, including connectivity to its Clearing Participant.

If requested by the Market Operator, the applicant must be able to provide, at any time, details of its connectivity to the Trading Platform and its Clearing Participant, including a diagram showing the location(s) of infrastructure and details of lines, fibre and networks.

Amended 15/06/15, 20/03/17

#### Procedure 1000(g)

The Prescribed Guarantor Clearing form which must be completed by an applicant to be a Trading Participant is set out in Appendix 1000(g).

Amended 15/06/15

#### Procedure 1000(i)

Deleted 15/06/15

#### Procedure 1002

If an applicant is incorporated or intends to carry on any part of its business as a Trading Participant outside Australia:

- (a) the Market Operator may require that the applicant (or a Related Body Corporate) currently conducts trading operations which are regulated by a foreign derivatives or securities exchange or foreign regulatory authority acceptable to the Market Operator;

- (b) the Market Operator may require the applicant (or persons connected with the applicant) to give an additional undertaking or undertakings governed by Australian law in respect of any matter which the Market Operator considers reasonable or in the interest of the Market Operator including, without limitation, undertakings as to:
  - (i) the amount of resources and number of Employees to be located in Australia;
  - (ii) access by the Market Operator to records required to be kept under these Rules;
  - (iii) foreign taxes that might be payable; and
  - (iv) the law governing the applicant's activities under the Rules and the applicant's submission to jurisdiction;
- (c) the Market Operator may require the applicant to provide a legal opinion, from independent lawyers acceptable to the Market Operator and paid for by the applicant, which deals with matters required by the Market Operator and which is acceptable to the Market Operator;
- (d) the Market Operator may require a performance bond in the form and substance acceptable to the Market Operator; and
- (e) if the applicant proposes to conduct any Overseas Activity (as defined in Rule [6400]), the Market Operator may require the applicant to notify ASX of the details of the proposed Overseas Activity and to demonstrate that the proposed Overseas Activity will comply with Procedure 6400.

Amended 15/06/15, 20/03/17

APPENDIX 1000g

**Prescribed Guarantor Clearing Participant Guarantee**

**GUARANTEE BY GUARANTOR CLEARING PARTICIPANT**

(Guarantor Clearing Participant)\_\_\_\_\_ hereby guarantees to the Market Operator and to each other Trading Participant of the Market Operator the performance of all Futures Contracts or Option Contracts traded on the Market Operator pursuant to the Rules of the Market Operator

by (name of Trading Participant) (the Trading Participant)\_\_\_\_\_ and to cause all such contracts to be registered with the Market Operator's Approved Clearing Facility in our name.

PROVIDED HOWEVER that this guarantee shall not extend to such transactions which are allocated to another Clearing Participant by the Trading Participant and where the allocation is accepted by that Clearing Participant.

The liability of the Guarantor Clearing Participant under this Guarantee is unconditional and shall not be affected by anything which but for this provision might operate to release it from its obligations including, without limiting the generality of the foregoing:

- (a) any transaction or arrangement that may take place between the Trading Participant and the Market Operator or any other Trading Participant of the Market Operator; and
- (b) the liquidation of the Trading Participant or any other person or corporation.

This guarantee shall be interpreted as if it were part of the Constitution and Rules of the Market Operator.

DATE: .....

SIGNED: .....  
(Director)

NAME: .....  
(Print)

Amended 15/06/15, 20/03/17

## TRADING

- [1100] Trading Messages may only be submitted into a Trading Platform by a Trading Participant in accordance with an appropriate Trading Permission.

### Products

- [1110] A Trading Participant may apply for, and the Market Operator may give to a Trading Participant, a Trading Permission in respect of one or more Products if the Market Operator considers it appropriate and is satisfied that the applicant will have in place and maintain adequate clearing and settlement arrangements in accordance with Rule [1000](i) for those products and have the technical capacity and knowledge required to exercise the Trading Permission for those Products and will meet any other requirement set out in the Procedures.

Amended 20/03/17

### Trading Platform

- [1120] A Trading Participant may apply for, and the Market Operator may give to a Trading Participant, Trading Permission in respect of one or more parts of the Trading Platform if the Market Operator considers it appropriate and is satisfied that the applicant will have in place and maintain the technical capacity and knowledge required to exercise the Trading Permission and will meet any other requirements set out in the Procedures.

Amended 20/03/17

### Capacity

- [1130] Subject to the Market Operator's powers under Rule [3130], a Trading Participant may apply for a Trading Permission for a level of Throughput Capacity as set out in the Procedures.

Amended 20/03/17

### Client Access

- [1140] A Trading Participant may apply for, and the Market Operator may give to a Trading Participant, Trading Permission to provide client access if the Market Operator considers it appropriate to give the Trading Permission and is satisfied that the applicant will have in place and maintain the required standards to exercise the Trading Permission and will meet any other requirements set out in the Procedures. Any Trading Messages submitted pursuant to this Trading Permission are considered to be submitted by the Trading Participant.

Amended 20/03/17

### Procedure 1120 – Trading Platform

At this time there are no specific requirements for Trading Permission in respect of one or more parts of the Trading Platform.

### Procedure 1130 – Capacity

At this time there is no prescribed maximum Throughput Capacity prescribed. Unless otherwise determined and notified by the Market Operator, there is currently no limit



prescribed for the maximum number of Open Interface Devices and the maximum aggregate Throughput Capacity of those Open Interface Devices operated by a Trading Participant.

Amended 20/03/17

#### Procedure 1140 – Client Access

There are no prescribed Procedures.

## ADMISSION OR TRADING PERMISSION

### Grant of Admission or Trading Permission

- [1200] The decision as to whether to grant admission as a Trading Participant or grant a Trading Permission is at the absolute discretion of the Market Operator. The Market Operator may grant or refuse admission without giving any reasons.

Amended 20/03/17

### Conditions

- [1210] When the Market Operator admits a Trading Participant or grants a Trading Permission it may at that time (or at any later time) impose any conditions on the admission or Trading Permission which it considers appropriate having regard to Rule [6120].

Amended 20/03/17

## ALLOCATION OF UNIQUE IDENTIFIERS

[1300] The Market Operator will allocate one unique identifier to each:

- (a) Trading Participant;
- (b) Open Interface Device;
- (c) client of a Trading Participant that submits Trading Messages other than through the Trading Participant's system.

Amended 20/03/17

[1301] A Trading Participant must allocate a unique identifier to each:

- (a) computer or other device which can connect to an Open Interface Device of a Trading Participant; and
- (b) client of that Trading Participant that submits Trading Messages other than through the Trading Participant's system (being the unique identifier allocated by the Market Operator under Rule [1300](c)).

Amended 20/03/17

## ONGOING REQUIREMENTS

[1400] A Trading Participant must at all times comply with the following general requirements:

- (a) continue to satisfy the applicable Admission Requirements;
- (b) comply with any conditions imposed on a Trading Participant under these Rules;
- (c) comply with the Rules, directions, decisions and requirements of the Market Operator;
- (d) not dispose, transfer, lease, assign or encumber any rights or obligations under these Rules, except as expressly permitted by these rules or with the prior written approval of the Market Operator; and
- (e) notify the Market Operator of the matters set out in the Procedures in the time and manner set out in the Procedures.

Amended 23/07/18

[1401] A Trading Participant must at all times comply with the following Operational Requirements:

- (a) have and maintain the necessary organisational and technical resources and competencies to ensure that:
  - (i) Trading Messages submitted by the Trading Participant do not interfere with the proper functioning of the Trading Platform; and
  - (ii) the Trading Participant complies with the Rules;including any resources and competencies specified in the Procedures;
- (b) have arrangements in place so that at all times the Trading Participant can determine the origin of all Orders and Trading Messages including the matters specified in the Procedures;
- (c) maintain and enforce at all times appropriate security arrangements which are designed to prevent unauthorised entry of Trading Messages; and
- (d) maintain records of the matters set out in the Procedures for the time set out in the Procedures.

Amended 20/03/17, 23/07/18

### Procedure 1400(e)

A Trading Participant must notify the Market Operator of the following matters:

#### **1. Change of name or address**

A Trading Participant must notify the Market Operator in writing of the following changes before they become effective:

- (a) any change to its name or any name under which it carries on business as a Trading Participant; or
- (b) any change to any address at which it carries on business as a Trading Participant.

The notice must include full details of the change.

## **2. Change of Directors, licence or authorisation and other details**

A Trading Participant must notify the Market Operator in writing:

- (a) within 10 Business Days of the appointment, resignation or removal of a director; and
- (b) immediately if:
  - (i) there is any change to a licence or other authorisation which authorises the Trading Participant to carry on its activities as a Trading Participant;
  - (ii) there is any other material change in information concerning its business as a Trading Participant from that previously provided to the Market Operator.

The notice must include full details of the change.

## **3. Regulatory action**

If a Trading 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 by it against the Trading Participant or any of its Employees, its delegates or an authorised person under the Corporations Act that relates in any way to its activities as a Trading Participant, the Trading Participant must notify the Market Operator in writing on or before the next Business Day of full details of that information.

## **4. Self-reporting**

Note: Trading Participants should also refer to Procedure 5000 for self-reporting requirements.

Amended 08/09/14, 15/06/15, 20/03/17

### Procedure 1401(a)

A Trading Participant must have the resources and processes specified in the Procedure to Rule 1000(f).

Amended 15/06/15

### Procedure 1401(b)

A Trading Participant must have arrangements to determine:

- (a) the order that corresponds to a Trading Message;
- (b) the Open Interface Device of the Trading Participant through which the Trading Message was submitted;
- (c) whether the Trading Message was submitted on the Trading Participant's own account or for a client.

### Procedure 1401(d)

A Trading Participant must maintain, for a period of seven years, records of the matters referred to in Procedure 1401(b).

Amended 24/01/22

## RESIGNATION OF TRADING PARTICIPATION OR CESSATION OF TRADING PERMISSION

[1600] If a Trading Participant wishes to resign as a Trading Participant, it must:

- (a) give at least 20 Business Days' written notice to the Market Operator of its intention to resign and the proposed date of resignation;
- (b) satisfy the Market Operator that it has taken, or will have taken before the proposed date of resignation, proper steps for the orderly winding down of its activities as a Trading Participant; and
- (c) comply with any reasonable direction of the Market Operator in relation to the orderly winding down of its activities as a Trading Participant.

Amended 20/03/17

[1600A] If a Trading Participant wishes to cease a Trading Permission it must:

- (a) give at least 20 Business Days' written notice to the Market Operator of its intention to cease a Trading Permission and the proposed date of cessation of the Trading Permission;
- (b) satisfy the Market Operator that it has taken, or will have taken before the proposed date of cessation, proper steps for the orderly winding down of its activities in respect of the relevant Trading Permission; and
- (c) comply with any reasonable direction of the Market Operator in relation to the orderly winding down of its activities in respect of the relevant Trading Permission.

Introduced 23/07/18

[1601] A notice given by a Trading Participant under Rule [1600](a) or [1600A](a) is not effective until the notice is accepted by the Market Operator in writing. The Market Operator may accept a Trading Participant's resignation of participation or cessation of a Trading Permission (as appropriate) when the Trading Participant has:

- (a) complied with Rule [1600](a) or [1600A], as the case requires; and
- (b) satisfied all its obligations to the Market Operator including, without limitation, paid all outstanding fees owing to the Market Operator by the Trading Participant under these Rules.

The Market Operator will not unreasonably refuse to accept a Trading Participant's resignation of participation or cessation of a Trading Permission under this Rule [1601].

Amended 20/03/17, 23/07/18

[1602] A Trading Participant is bound by the Rules until the Market Operator has accepted the Trading Participant's resignation under Rule [1601] or until the Trading Participant's admission is terminated under these Rules. A Trading Participant's obligations under the Rules after resignation continue in accordance with Rules [5500] and [5501].

Amended 20/03/17

## USE OF MARKET OPERATOR SYSTEMS

[1700] A Trading Participant that uses Market Operator Software and Market Operator Equipment is governed by the terms of usage set out in the Procedures.

Amended 20/03/17

### Procedure 1700

For the purposes of Rule [1700] the following are the terms of usage of Market Operator Software and Market Operator Equipment:

#### **1700.1 Licence Over Market Operator Software**

(a) Grant of Licence

By meeting and continuing to meet the conditions set out in the Rules, a Participant is granted by the Market Operator and continues to hold, a non-transferable, non-exclusive Licence to use such part of the Market Operator Software as is approved by the Market Operator.

(b) Conditions of Licence

The conditions of a Licence granted to a Participant under Rule [1700] are that the Participant must:

- (i) use the Licensed Software solely for purposes in the ordinary course of business directly related to the Trading Participant's activities as a Trading Participant;
- (ii) pay to the Market Operator the Trading Infrastructure Fee and any Support Fee;
- (iii) not breach any Intellectual Property rights of the Market Operator or any other third party in relation to the Licensed Software;
- (iv) use the Licensed Software only in accordance with the Rules;
- (v) 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;
- (vi) 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 the Market Operator;
- (vii) not transfer the Licensed Software to or network it with any site other than the site authorised by the Market Operator from time to time;
- (viii) 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;
- (ix) not change, modify, amend or alter the Licensed Software or permit, employ or contract any other party (other than the Market Operator or a party authorised by the Market Operator) to do so;
- (x) not remove or deface any identification of ownership of copyright, trade mark or other proprietary rights connected with the Licensed Software;

- (xi) 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;
- (xii) not derive works from the Licensed Software which infringe the Copyright Act 1968 (Cth);
- (xiii) not use or permit the use of the Licensed Software by any persons not authorised to do so;
- (xiv) not attach to the Licensed Software any item which is not Market Operator Equipment or equipment approved by the Market Operator;
- (xv) not disseminate data or confidential information generated by the Market Operator System to a third party or allow a third party access to the Market Operator System for the purpose of dissemination of that data or confidential information to others;
- (xvi) install any enhancements or upgrades to the Licensed Software as the Market Operator may from time to time direct;
- (xvii) upon the Market Operator giving the Trading Participant reasonable notice, allow the Market Operator to effect any enhancements or upgrades to the Licensed Software as required by the Market Operator;
- (xviii) only use the Licensed Software on a site or sites as the Market Operator may from time to time agree to in writing;
- (xix) use the Licensed Software in accordance with any operating instructions supplied by the Market Operator or by any other party on behalf of the Market Operator;
- (xx) use all reasonable endeavours to maintain an environment suitable to keep the Licensed Software in effective working order and condition;
- (xxi) use all reasonable endeavours to prevent reckless or negligent use or wilful abuse of the Licensed Software;
- (xxii) 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 Trading Participant, its officers or agents;
- (xxiii) notify the Market Operator as soon as possible in the event of a breakdown of, or malfunction in, or defect in, the Licensed Software;
- (xxiv) not permit any unauthorised software to be installed or loaded in conjunction with the Licensed Software;
- (xxv) for Trading Participants that do not trade on behalf of Clients, not permit at a Participant level, in relation to the pre-trade risk management (PTRM) Licenced Software:
  - (A) 2 message rejects per second more than 5 times within one Trading Date (night and day session), or
  - (B) 5 message rejects per second in any single instance.

Any message rejects at or above these levels will be considered a contravention of the Rules.

for Trading Participants that trade on behalf of Clients this Procedure will only apply where the number of rejects are considered to be persistent. Persistent rejects are those that have occurred:



- (C) 2 times during a Roll month (March, June, September and December) where the rejects relate to Strategy Orders, or
- (D) 5 times during any calendar month.

Any persistent message rejects at or above these levels will be considered a contravention of the Rules.

Explanatory Note:

Procedure 1700.1(b)(xxv) does not apply to orders that are rejected by the Anomalous Order Threshold functionality described in Procedure 3200.

(c) Title to Licensed Software

- (i) With the exception of a non-exclusive Licence granted pursuant to Procedure 1700.1(a), use by a Trading Participant of the Market Operator System will not confer upon the Trading Participant any right, title or interest in the Licensed Software.
- (ii) Ownership of any Intellectual Property rights in
  - (A) the Licensed Software; and
  - (B) any works within the meaning of the Copyright Act 1968 (Cth) derived from the Licensed Software,
 will vest or remain vested in the Market Operator or the relevant Licensor or any other entity as the Market Operator or its Licensor (as the case may be) may in their sole discretion elect.

(d) Warranty as to Title

The Market Operator warrants to each Trading Participant to whom it grants a Licence in accordance with 1700.1(a) that it is authorised to grant the Licence and that the Trading Participant is entitled to use the Licensed Software in accordance with the Rules.

(e) Intellectual Property Rights Indemnity

- (i) The Market Operator agrees to indemnify each Trading Participant to whom a Licence has been granted against any loss the Trading Participant may suffer due to any claim by any third party that the use or possession by the Trading Participant of the Licensed Software infringes any Intellectual Property right of that third party but only to the extent to which the Market Operator is actually indemnified by its Licensors under the relevant licence agreements and provided that:
  - (A) The Market Operator is given notice of the claim as soon as practicable after receipt of a written claim by the Trading Participant from any such third party;
  - (B) The Market Operator or its Licensors (as the case may be) are given complete control over such claim, and the Participant fully co-operates with the Market Operator at the Market Operator's or its Licensor's reasonable expense in the conduct of such claim;
  - (C) the Trading Participant does not prejudice in any manner the Market Operator's or the Licensor's conduct of such claim;
  - (D) the claim is not based upon the use of the Licensed Software in a manner:
    - (I) not authorised under these Rules;
    - (II) for which the Licensed Software was not designed; or

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

Amended 20/03/17, 02/09/19, 28/07/21

## **1700.2 Terms Relating to Market Operator Equipment**

- (a) Supply of Market Operator Equipment
  - (i) Any Market Operator Equipment supplied to a Trading Participant by the Market Operator will be supplied, installed and serviced subject to the Participant complying with the conditions in 1700.2 and subject to the Rules.
  - (ii) The quantity and type of Market Operator Equipment supplied pursuant to Procedure 1700.2 shall be as approved by the Market Operator.
  - (iii) Any equipment supplied by a Trading Participant must comply with specifications approved by the Market Operator and, if the Market Operator so determines, must be installed by the Market Operator.
- (b) Conditions of use of Market Operator Equipment
 

The conditions applicable to the supply to and use of the Market Operator Equipment by a Trading Participant are that the Trading Participant must:

  - (i) pay to the Market Operator the Trading Infrastructure Fee and any Support Fee;

- (ii) use the Market Operator Equipment in accordance with any operating instructions supplied by the Market Operator or by any other party on behalf of the Market Operator;
  - (iii) use all reasonable endeavours to maintain an environment suitable to keep the Market Operator Equipment in effective working order and condition;
  - (iv) use all reasonable endeavours to prevent reckless or negligent use or wilful abuse of the Market Operator Equipment;
  - (v) bear all costs of repairing or replacing damaged Market Operator Equipment where such damage results from negligent or reckless use or wilful abuse of the Market Operator Equipment on the part of the Trading Participant, its officers or agents;
  - (vi) notify the Market Operator as soon as possible in the event of a breakdown of, or malfunction in, or defect in, the Market Operator Equipment;
  - (vii) insure the Market Operator Equipment to its full market value, such value to be advised in writing by the Market Operator;
  - (viii) not permit any unauthorised software to be installed or loaded onto the Market Operator Equipment.
- (c) **Title to the Market Operator Equipment**
- Title to the Market Operator Equipment will remain with the Market Operator or a Related Body Corporate and shall not pass to a Trading Participant upon delivery of the Market Operator Equipment to the Trading Participant at the agreed site.
- (d) **Insurance**
- A Trading Participant must effect and maintain adequate insurance cover with a reputable insurance company with respect to loss or damage to the Market Operator Equipment and for any potential liability, loss or damage arising out of use of the Market Operator Equipment and must produce on demand by the Market Operator evidence of such insurance cover.

Amended 20/03/17

### **1700.3 Terms Relating to Both Licensed Software and Market Operator Equipment**

- (a) **Responsibility of the Market Operator**
- The Market Operator will:
- (i) supply and service the Market Operator Equipment and the Licensed Software in the Sydney central business district, or such other location(s) as the Market Operator may designate in writing, in accordance with the installation and servicing instructions for the Market Operator Equipment and the Licensed Software or as otherwise provided by the Market Operator from time to time;
  - (ii) subject to Procedures 1700.1(b)(xxii) and 1700.2(b)(v), as soon as reasonably possible repair or replace damaged Market Operator Equipment and Licensed Software;
  - (iii) liaise with the Trading Participant concerning the Trading Participant's requirements for Market Operator Equipment and Licensed Software;
  - (iv) co-ordinate additions, reductions and relocations of Market Operator Equipment and Licensed Software;
  - (v) maintain an inventory of Market Operator Equipment and Licensed Software and provide a copy of the same to the Trading Participant upon reasonable request;

- (vi) provide a facility for the Trading Participant to report faults in the Market Operator Equipment and the Licensed Software to operational staff;
- (vii) invoice the Trading Participant monthly;
- (viii) provide the Trading Participant with upgrades or enhancements of the Licensed Software as and when they become available;
- (ix) in consideration for payment by the Trading Participant of the Support Fee, provide the Trading 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:
  - (A) telephone support;
  - (B) remote access support.
  - (C) on-site support where the Market Operator determines that support cannot be provided through the use of telephone support, or remote access capability.

(b) Responsibility for Security

A Trading Participant will be solely responsible for the use of the Market Operator System by any person not authorised by the Market Operator or for any misuse, damage or destruction of the Market Operator System resulting from the use of the Market Operator System by the Trading Participant.

(c) Termination of Licence

The Market Operator may terminate a Licence granted to the Trading Participant under Rule [1700] and the Participant's access to the Market Operator System in the event that the Trading Participant ceases to be a Trading Participant of the Market Operator as a result of enforcement action taken under the Rules.

(d) Suspension of Licence

The Market Operator may suspend a Participant's access to the Market Operator System in the event that:

- (i) the Trading Participant's Participant status or trading rights have been suspended under these Rules; or
- (ii) in the opinion of the Chief Executive or his or her designate, a physical emergency (as described in these Rules) occurs and the Chief Executive (or in his or her absence, his or her designate) or the Board, as the case may be, determines that such suspension is necessary to deal with the emergency;
- (iii) 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 Trading Participant fails to pay the Trading Infrastructure Fee or the Support Fee within 30 days of the due date where the Market Operator has issued a notice in writing to that effect to the Trading Participant requiring payment, the Trading Participant has failed to pay the amount set out in that notice within thirty days, the Market Operator has issued a second notice, the Trading Participant has failed to pay the amount set out in the Market Operator'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.

(e) Suspension to be lifted

If:

- (i) the Trading Participant's Participant status and trading rights in the Market Operator are no longer suspended; or

- (ii) a physical emergency ceases to exist; or
- (iii) the Trading Participant pays to the Market Operator the amount referred to in paragraph (d)(iii) as well as any other outstanding amount which has accrued from the date of the last notice issued by the Market Operator,

then the Market Operator must immediately lift the suspension of the Trading Participant's access to the Market Operator System.

(f) Trading Participant's Obligations on Termination of Licence

Upon termination of a Licence granted to it under paragraph 1(a), a Trading Participant will within 7 days of termination:

- (i) cease use of the Market Operator System, return all documentation relating to the Market Operator System to the Market Operator and certify in writing to the Market Operator that it has complied with the foregoing;
- (ii) return all Market Operator Equipment and Licensed Software to the Market Operator; and
- (iii) pay any outstanding Trading Infrastructure Fee, Support Fee and other charges and expenses.

Amended 20/03/17

## TRADING ON BEHALF OF US CUSTOMERS

[1800] A Trading Participant may enter transactions on behalf of US customers if it complies with the conditions set out in the Procedures.

### Procedure 1800

#### Trading on Behalf of US Clients and Trading from Locations within the US

- Conditions under which Trading Participants may trade Market Operator products on behalf of clients located in the US are in Procedure 1800.1;
- Products on other exchanges which may be traded on behalf of clients located in the US are in Procedure 1800.2;
- Market Operator products which may be traded on behalf of clients located in the US are in Procedure 1800.3; and
- Conditions under which Trading Participants may place Market Operator terminals in the US offices of Trading Participants or their clients are set out in Procedure 1800.4.

Note: In this Procedure the term ‘trading’ has been used to mean soliciting or accepting orders for or involving Market Operator Contracts, and in connection therewith accepting any client funds or securities or extending credit to margin, guarantee or secure any trades or contracts.

Amended 20/03/17

### **1800.1 Trading Market Operator Products for Clients in the US**

#### **1. Relief under Regulation 30.10**

Persons who wish to trade Market Operator products for clients in the United States are required EITHER to be registered with the CFTC as Futures Commission Merchants (FCMs) OR to have been granted relief from the requirement to so register under Regulation 30.10 of the Regulations under the US Commodity Exchange Act.

Most Trading Participants of the Market Operator have obtained relief under Regulation 30.10.

Trading Participants who do not act directly for US clients are not required to be registered by the CFTC and therefore need not apply for relief – for example:

- a Participant who provides only execution and/or clearing service for a registered FCM and who has no contact with the FCM’s clients; or
- a Participant who trades Market Operator products solely for its US subsidiary or affiliate or US branch office, for “proprietary accounts” (ie. house accounts)

is not required to be registered as an FCM or to apply for relief under Regulation 30.10.

Likewise Trading Participants who:

- execute orders for Market Operator products for or on behalf of the foreign futures and options customer omnibus account of an FCM, without soliciting or accepting funds or security directly from any US clients, or

- carry the foreign futures and options customer omnibus account for an FCM and who accept orders for Market Operator products from a person authorised by the FCM as an authorised customer<sup>1</sup>

need not be registered as an FCM or obtain a Regulation 30.10 relief.

Relief under Regulation 30.10 is available only to persons who:

- are located outside the US; and
- who trade on behalf of clients in the US.

It does not apply to trading in the US. Trading Participants who wish to trade on US exchanges in the US must either be members of those exchanges or have an arrangement with an FCM who is a member.

## 2 Rationale for CFTC granting relief to Participants from registration as an FCM

In November 1988 the CFTC granted an Order in respect of the Market Operator, pursuant to which a Trading Participant (then known as a Member) and the Market Operator on behalf of each Participant may file a document with the CFTC giving undertakings and agreeing to comply with the conditions of the Order. Once the document is processed the Members/Trading Participants concerned are excused from compliance with certain of the CFTC's foreign futures and options rules, the major rule being that which requires registration with the CFTC as an FCM. The Order was granted on the basis that the CFTC was satisfied that the regulatory regimes to which Market Operator Trading Participants are subject are comparable with those to which registered FCM's are subject in the US, and subject to the conditions specified in the Order.

Key areas of regulatory comparability include:

- registration, authorisation or other form of licensing, fitness review or qualification of persons through whom client orders are solicited and accepted;
- minimum financial requirements for those persons that accept client funds;
- minimum sale practice standards, including disclosure of risks, and the risk of transactions undertaken outside the US;
- procedures for auditing compliance with the requirements of the regulatory programme, including record keeping and reporting requirements;
- protection of client funds from misapplication; and
- the existence of appropriate information sharing arrangements.

## 3 Marketing

Participants who have been granted relief under Regulation 30.10 may engage in limited marketing activities from within the US. The conditions of such marketing are:

- it is limited to 30 business days in any calendar year in the aggregate;
- the Trading Participant must supervise and accept liability for all conduct by its employees or other representatives which takes place in the US with respect to its marketing activities;
- all accounts opened and all orders accepted must be effected directly through the Trading Participant's own office in Australia; and

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<sup>1</sup> An 'authorised customer' is a person within the US with specific qualifications, who is authorised by an FCM to place orders for the FCM's foreign futures and options customer omnibus account.

- it is limited to US clients which are institutions, government entities and individuals who have a high degree of sophistication and substantial financial resources. Such persons include:
  - (i) registered FCM<sup>2</sup>s, IB<sup>3</sup>s, CPO<sup>4</sup>s and CTA<sup>5</sup>s;
  - (ii) brokers and dealers registered with the Securities Exchange Commission;
  - (iii) investment companies, business development companies, banks, and insurance companies appropriately registered in the US;
  - (iv) governmental entities, including the US, a US state or a foreign government, or a division or agency of any of them;
  - (v) plans established for the benefit of the employees of a state, an organisation described in section 202(a)(22) of the US Investment Advisers Act of 1940, a corporation, business trust, partnership, pool, trust or insurance company which in all cases has assets in excess of US\$5 million;
  - (vi) self-directed employee benefit plans where investment decisions are made solely by persons that are accredited investors as defined in 17 CFR<sup>6</sup> 230.501(a) or any entity in which all of the equity owners are accredited investors as defined in 17 CFR 230.501(a);
  - (vii) appropriately licensed Small Business Investment Companies;
  - (viii) natural persons whose individual net worth or joint net worth with that person's spouse exceeds US\$1 million; or
  - (ix) natural persons who had an individual income in excess of US\$200,000 in each of the two most recent years, or joint income with that person's spouse in excess of US\$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year.

Amended 20/03/17

## 1800.2 Products on Other Exchanges

On July 17 2006 the CFTC issued a Supplemental Order which authorises Trading Participants who already have relief under Regulation 30.10 to solicit and accept orders from US clients for trading on certain other exchanges where those exchanges are determined by the Market Operator<sup>7</sup>. See below for a list of exchanges which have been determined. (These exchanges are all located outside the US and (other than the Market Operator) outside Australia).

Dealing on these other exchanges is subject to compliance with Rule [1800]. In addition, the Supplemental Order requires Trading Participants who wish to benefit from it to agree to provide to the CFTC or the US Department of Justice, the books and records related to

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<sup>2</sup> Futures Commission Merchants

<sup>3</sup> Introducing Brokers

<sup>4</sup> Commodity Pool Operators

<sup>5</sup> Commodity Trading Advisers

<sup>6</sup> Code of Federal Regulations

<sup>7</sup> This Supplemental Order replaces an earlier Order which provided for Participants to deal for US clients, subject to certain conditions, on exchanges which were 'recognised' exchanges published in Schedule 11 of the Corporations Regulations. Schedule 11 was removed as a part of the Financial Services Reform amendments to the Corporations Act.



trading on these exchanges on the same basis as they do in respect of trading Market Operator products for US clients (as set out in Procedure for Obtaining Relief Under CFTC Regulation 30.10 below, in item (b) of the Undertakings by Participants). By effecting transactions pursuant to the Supplemental Order, Trading Participants will be deemed to have agreed to this condition without the need to provide a formal undertaking to do so.

Participants should note that whilst Rule [1800] and the Procedures sets out rules relating to dealing on 'Non-US Exchanges', the Supplemental Order refers to 'non-US and non-Australian exchanges' – ie the Order does not extend to dealing on ASX. Trading Participants wishing to deal in futures and options contracts on ASX on behalf of US clients must be ASX Participants and have CFTC Rule 30.10 relief granted to them in that capacity – for details see ASX's Circular entitled 'ASX Participants trading futures contract on behalf of US clients'.

If Trading Participants wish the Market Operator to determine an additional exchange pursuant to Rule [1800] they should send an email to [compliance@asx.com.au](mailto:compliance@asx.com.au) to enable the Market Operator to consider the matter. Trading Participants should provide the name of the exchange, the name of its regulator, the contracts which are traded on that exchange (including, as relevant, equities, futures, options over futures), the volume of contracts traded (separated into equities and derivatives) and the contract(s) in which the Trading Participant proposes to deal for US clients.

When dealing on behalf of US customers on Non-US Exchanges, Trading Participants who have received relief under Rule 30.10 of the Commodity Futures Trading Commission Regulations (17 CFR Part 30 Rule 30.10) of the US to deal on behalf of US customers on Non-US Exchanges:

- (a) may not deal for US customers on any exchanges except for the Market Operator and those exchanges which are determined by the Market Operator for the purposes of this Rule [1800];
- (b) must, when dealing on behalf of US customers on exchanges determined for the purposes of Rule [1800] comply with the Rules relating to:
  - (i) Order Records and Accounting Records under the ASIC Market Integrity Rules;
  - (ii) Clients' Segregated Account Obligations under the ASIC Market Integrity Rules; and
  - (iii) Mandatory Recording of Information by the Market Operator and its Trading Participants under the ASIC Market Integrity Rules;as though they applied to Trading Participants dealing on behalf of clients on the exchanges determined in Rule [1800];
- (c) must provide their US customers with such risk disclosure statement as may be determined by the Market Operator;
- (d) must advise the Commodity Futures Trading Commission or its delegate of any Non-US Exchange on which it proposes to deal on behalf of a US customer, before commencing to deal on their behalf; and
- (e) must notify the Market Operator immediately upon becoming aware that it has breached any part of Rule [1800].

### **Exchanges Determined**

ADEX Athens Exchange Derivatives Market

OB Oslo Bors

BM & F Commodities & Futures Exchange Brazil

OMX Exchanges (Nordic Derivatives Market – Stockholm, Copenhagen, Helsinki, Riga, Tallinn, & Vilnius)

BSE Budapest Stock Exchange  
OME Osaka Mercantile Exchange  
C-Com Central Japan Commodity Exchange  
OSE Osaka Securities Exchange  
DGCX Dubai Gold and Commodities Exchange  
RTS Russian Trading System Stock Exchange  
EDX EDX London  
SAFEX South African Futures Exchange  
EEX European Energy Exchange  
SGX Singapore Exchange  
Eurex  
SHFE Shanghai Futures Exchange  
Euronext (Paris, Amsterdam, Brussels, Lisbon)  
SICOM Singapore Commodity Exchange Limited  
Euronext.liffe  
SPSE Sao Paulo Stock Exchange  
HKEX Hong Kong Exchanges & Clearing Ltd  
TAIFEX Taiwan Futures Exchange  
ICE Futures (formerly IPE)  
TASE Tel Aviv Stock Exchange Limited  
IDEM Italian Derivatives Market  
TRX Tokyo Financial Exchange (formerly TIFFE, Tokyo International Financial Futures Exchange)  
ISE International Securities Exchange  
TOCOM Tokyo Commodity Exchange  
LME London Metal Exchange  
TGE Tokyo Grain Exchange  
KRX the Korea Exchange  
TSE Tokyo Stock Exchange  
MDEX Bursa Malaysia Derivatives  
Turkdex Turkish Derivatives Exchange  
ME Montreal Exchange  
WB Wiener Börse AG  
MEFF Mercado Espanol de Futuros Financieros  
WCE Winnipeg Commodity Exchange  
MexDer Mexico Derivatives Exchange  
WSE Warsaw Stock Exchange  
NSE National Stock Exchange of India Limited  
Turquoise Global Holdings Limited

It should be noted that:

1. The listing of these exchanges by the Market Operator is for identification purposes only and in no way indicates that the Market Operator has approved them.
2. The CFTC Order allows dealings for US customers in futures contracts and options over futures contracts which are offered by the above exchanges only where such contracts are approved for such purposes. Most futures contracts over stock indices and government debt have not been approved. A list of such contracts which have been approved by the CFTC may be found on the CFTC's web-site at <http://www.cftc.gov/opa/backgroundunder/opapart30.htm>.
3. Whilst some of the exchanges listed above offer equity and other products as well as futures and options, the Market Operator's listing of the exchanges does not mean that Participants may deal in those contracts on behalf of US customers – the listing applies only to futures contracts and options over futures contracts (where those contracts have been approved, as mentioned in (2) above).
4. Rule [1800] requires Participants to give prior notification to the CFTC or its delegate of every exchange determined pursuant to Rule [1800] on which it proposes to deal for US clients.
5. New Trading Participants making application for relief under Regulation 30.10 will be required as a part of the application to provide a list of relevant exchanges. Trading Participants who had already received relief under Regulation 30.10 when the Supplemental Order dated 17 July 2006 was issued have provided the Market Operator with a list.
6. When a Trading Participant wishes to add an exchange to the list of already determined exchanges, they should give prior notification in advance of commencing to trade on that exchange, by sending an email to [compliance@asx.com.au](mailto:compliance@asx.com.au). The Market Operator will then forward the notification to the National Futures Association.

Amended 09/11/12, 20/03/17

### **1800.3 Market Operator Contracts which may be traded on behalf of US clients**

The CFTC restricts some TYPES of contracts which may be traded on behalf of US clients; there is no restriction on exchange traded futures over commodities, or options over those futures contracts, but the offer or sale of exchange traded futures or options on stock index and government debt products is not permitted unless specific approval has been given by the CFTC. A list of all such products approved by the CFTC is kept up to date by the CFTC on their website – see <http://www.cftc.gov/opa/backgroundunder/opapart30.htm>.

Most of the Market Operator's products are not restricted in this manner. A complete list of those which are approved for trading on behalf of clients in the US appears on the ASX website.

Amended 20/03/17

### **1800.4 Placement of Terminals in the US**

Market Operator terminals may be placed in the US to enable eligible Trading Participants and their clients to trade Market Operator products directly. The Market Operator has been able to do this because the Commodity Futures Trading Commission (CFTC) has granted relief from the normal requirement in the US that it be designated as a "Derivatives

Transaction Execution Facility”. This relief has been granted by way of a ‘no-action’ letter<sup>8</sup> and on the basis that the CFTC is satisfied that the regulatory environments in which the Market Operator and its Participants operate are comparable to those which apply in the US.

1. Use of Terminals in the US

1. Trading Participants must appoint an agent in the US who will receive, on their behalf, communications from the CFTC;
2. Market Operator terminals may be placed in Trading Participants’ US offices and the offices of their affiliates, for proprietary trading;
3. Market Operator terminals may be placed in the offices of the US clients of Trading Participants, and the clients authorised by the Trading Participants to enter orders directly into the Market Operator terminals provided:
  - 3.1. the Trading Participant guarantees and assumes all financial responsibility for all activity conducted through each terminal.
  - 3.2. the Trading Participant has relief under Regulation 30.10
  - 3.3. the Trading Participant agrees to comply with the various conditions of the approval.

2. Conditions of use of Market Operator terminals in clients’ offices in the US

The conditions imposed pursuant to item 3.3 above are that the relevant Trading Participant:

- 2.1. must agree to and submit to the jurisdiction of the CFTC with respect to the activities conducted pursuant to the no-action relief;
- 2.2. must agree to provide, on the request of the CFTC, the United States Department of Justice and if appropriate, the National Futures Association, prompt access to original books and records maintained at our United States offices as well as to the premises where Market Operator terminals are installed or used in the USA;
- 2.3. will take reasonable steps to prevent unauthorised access to Market Operator terminals;
- 2.4. will assist the Market Operator in a timely manner in any investigation into potential violations of Market Operator Rules, the Commodity Exchange Act (CEA) or the terms and conditions of the no-action relief, including but not limited to, requiring the client to produce documents, to answer questions from the Market Operator and/or appear in connection with the investigation;
- 2.5. will suspend or terminate the clients’ access to the Market Operator terminal if the Market Operator determines that the actions of the client threaten the integrity or liquidity of any contract, violates any of the Rules of the Market Operator, the CEA or the terms and conditions of the no-action relief or if the client fails to co-operate in an investigation.

### **Procedure for Obtaining Relief Under CFTC Regulation 30.10**

The CFTC has authorised the National Futures Association (NFA) to receive and process applications for and to grant Regulation 30.10 exemptions. Each Trading Participant who intends to take advantage of the relief is required to give the undertakings set out below.

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<sup>8</sup> A ‘no-action’ letter states that the relevant department within the CFTC will not recommend enforcement action against the exchange solely because of the latter’s failure to obtain Derivatives Transaction Execution Facility designation.

The Market Operator has prepared forms, which are available upon request, to assist Participants in their application for this exemption, and the forms include these undertakings.

The NFA charges Participants an annual fee of US\$100 (or as amended) for registration, records and maintenance; invoices are sent out annually to Participants and failure to pay the fee within 30 days following the due date is deemed to be a request to withdraw the confirmation of exemption.

#### *Undertakings by Trading Participants:*

Participants must give:

- (a)
  - (i) a consent to US jurisdiction;
  - (ii) a valid and binding appointment of an agent in the US for the service of process; such agent may be a registered Futures Commission Merchant or the National Futures Association;
- (b) an agreement to provide books and records related to transactions under Part 30 upon request, to a representative of the CFTC or the US Department of Justice, within 72 hours or such lesser period as may be specified; (the Market Operator understands that copies of such books and records would normally be acceptable);
- (c) representations that no principal of the Trading Participant would be disqualified from doing business under Section 8a(2) of the Commodity Exchange Act (for reasons such as refusal of or suspension of a licence, conviction within the last ten years of embezzlement, theft, fraud or felony, etc);
- (d) disclose the identity of each subsidiary or affiliate of a Trading Participant which is domiciled within the US with related business (eg a bank or broker), and a brief description of that subsidiary's or affiliate's principal business in the US;
- (e) an undertaking that the Trading Participant will not accept any futures related business from any of its affiliates or subsidiaries in the US (other than a proprietary account of the affiliate or subsidiary) unless such entities are registered appropriately with the CFTC;
- (f) a statement that the Trading Participant has informed in writing its affiliates or subsidiaries which are banks, broker-dealers, or dealers in cash commodities that they may not introduce to or solicit futures business on behalf of the Trading Participant unless such entities are appropriately registered;
- (g) a consent to participate in any National Futures Association paper arbitration programme for the resolution of client disputes and consent to notify all US clients of the availability of such a program;
- (h) an agreement to maintain the greater of NTA as required by the Market Operator Rules or 4 per cent of funds segregated on behalf of US clients; and
- (i) an undertaking to comply with the Corporations Act and the Market Operator Rules.

#### *Undertakings by the Market Operator*

The Market Operator is also required to lodge with the CFTC, in respect of each Trading Participant which requires the exemption, representations that:

- (a) the Trading Participant is licensed, is in good standing, is engaged in business with clients in Australia and would not be disqualified under Section 8(a)(2) of the Commodity Exchange Act;
- (b) The Market Operator will monitor the Trading Participant for compliance with regulatory requirements; and
- (c) The Market Operator will notify the CFTC or the NFA of any change in a Trading Participant's status, including termination of trading in the US, which would affect its eligibility to continue to enjoy the exemption.

### *Appointment of Agent*

Trading Participants should note that the first step in complying with the CFTC's conditions is the appointment of a U.S. agent. The NFA has indicated that it will provide its services as an agent upon completion and lodgement of its Agency Agreement in triplicate. The agency fee is included in the US\$100 registration, records and maintenance fee. Copies of the "Request to Appoint the NFA as Agent" and the appointment form for an agent other than the NFA are also available from the Market Operator upon application. Trading Participants that are in good standing with the Market Operator who intend to appoint the NFA as an agent should lodge the "Request to Appoint the NFA as Agent" form with the Market Operator, which will then arrange for same to be forwarded to the NFA.

Participants who do not wish to appoint the NFA as their agent may appoint a registered futures commission merchant in the US as their agent.

### *Location in the United States – Subsidiaries and Affiliated Companies*

A Trading Participant which is a US based company with branches outside the US is located in the US and so would not be eligible for Regulation 30.10 exemption. Any such Trading Participant must make application for registration as an FCM in order to trade on behalf of US customers.

A Trading Participant with related companies in the US is normally eligible for Regulation 30.10 exemption. The Trading Participant is, however, required to disclose the existence of all related companies which are in the business of banking, broking or commodities merchandising and may not accept futures related business from those entities (unless the latter are registered FCMs, IBs or CTAs) and must inform those entities that they may not introduce to, or solicit futures business on behalf of, the Trading Participant, (again, unless such entities are appropriately registered).

Particular conditions apply to Trading Participants' bank branches located in the US. Those branches may not:

- engage in futures or options trading except for their proprietary account;
- refer any foreign futures or options transactions to the Trading Participant;
- solicit or enter into foreign futures or options business on behalf of the Trading Participant; or
- establish relationships in the US with the Trading Participant's clients in the US for the purpose of facilitating the Trading Participant's futures and options business in the US.

In addition, the Trading Participant must maintain all contract documents, books and records relating to its trading for US clients outside the US, and both it and its US bank branches must provide, on request by the CFTC, the NFA or the US Department of Justice, access to their books and records for the purpose of ensuring compliance with the above.

### *Risk Disclosure Statements*

Prior to opening an account with a US client (other than an institutional client), a Trading Participant with Regulation 30.10 relief is required to provide a prescribed Risk Disclosure Statement (RDS) to the client and have the client sign it or, if the Statement is provided electronically, have the client acknowledge that he has received and understood the Statement. A copy of the statement is attached at Annexure B. Participants should note that an RDS is required even where a Product Disclosure Statement (PDS) has been provided, as the wording of a RDS is slightly different from that of a PDS.

Trading Participants should note that 'institutional clients' as described in the CFTC Regulations do not need to be provided with an RDS but they should be aware that such 'institutional clients' are not necessarily the same as 'wholesale clients' as described in the Corporations Act of Australia, so that where a Trading Participant is not required to provide

an Australian client with a PDS Statement, it may be required to provide an equivalent client with a RDS if the client is located in the US.

Institutional clients include:

- financial institutions,
- US regulated insurance companies, investment companies and investment advisers,
- US regulated commodity pools with total assets exceeding US\$5 million,
- corporations, partnerships, proprietorships, organisations, trusts or other entities with total assets which exceed US\$10 million,
- US regulated retirement benefit schemes with total assets exceeding US\$5 million,
- certain US government entities,
- brokers or dealers subject to regulation by the Securities Exchange Commission,
- FCMs, floor brokers and floor traders regulated by the CFTC,
- individuals with total asset in excess of US\$10 million.

The above list is provided as a guide only. A full list of persons who comprise institutional clients may be found in the definition of 'eligible contract participant' in Section 1a subsection 12 of the US Commodity Exchange Act at [www.access.gpo.gov/uscode/title7/chapter1\\_.html](http://www.access.gpo.gov/uscode/title7/chapter1_.html).

Amended 20/03/17

### **Risk Disclosure Statement**

- The Risk Disclosure Statement determined is that required by the CFTC Regulations from time to time. The current version is set out below.
- No Risk Disclosure Statement is required where none is required by the CFTC Regulations (for example, for institutional clients) – see section above on Risk Disclosure Statements.

## **RISK DISCLOSURE STATEMENT**

THE RISK OF LOSS IN TRADING COMMODITY FUTURES CONTRACTS CAN BE SUBSTANTIAL. YOU SHOULD, THEREFORE, CAREFULLY CONSIDER WHETHER SUCH TRADING IS SUITABLE FOR YOU IN LIGHT OF YOUR CIRCUMSTANCES AND FINANCIAL RESOURCES.

You should be aware of the following points:

- (1) You may sustain a total loss of the funds that you deposit with your broker to establish or maintain a position in the commodity futures market, and you may incur losses beyond these amounts. If the market moves against your position, you may be called upon by your broker to deposit a substantial amount of additional margin funds, on short notice, in order to maintain your position. If you do not provide the required funds within the time required by your broker, your position may be liquidated at a loss, and you will be liable for any resulting deficit in your account.
- (2) Under certain market conditions, you may find it difficult or impossible to liquidate a position. This can occur, for example, when the market reaches a daily price fluctuation limit ("limit move").
- (3) Placing contingent orders, such as "stop-loss" or "stop-limit" orders, will not necessarily limit your losses to the intended amounts, since market conditions on the exchange where the order is placed may make it impossible to execute such orders.

- (4) All futures positions involve risk, and a “spread” position may not be less risky than an outright “long” or “short” position.
- (5) The high degree of leverage (gearing) that is often obtainable in futures trading because of the small margin requirements can work against you as well as for you. Leverage (gearing) can lead to large losses as well as gains.
- (6) You should consult your broker concerning the nature of the protections available to safeguard funds or property deposited for your account.

ALL OF THE POINTS NOTED ABOVE APPLY TO ALL FUTURES TRADING WHETHER FOREIGN OR DOMESTIC. IN ADDITION, IF YOU ARE CONTEMPLATING TRADING FOREIGN FUTURES OR OPTIONS CONTRACTS, YOU SHOULD BE AWARE OF THE FOLLOWING ADDITIONAL RISKS:

- (7) Foreign futures transactions involve executing and clearing trades on a foreign exchange. This is the case even if the foreign exchange is formally “linked” to a domestic exchange, whereby a trade executed on one exchange liquidates or establishes a position on the other exchange. No domestic organization regulates the activities of a foreign exchange, including the execution, delivery, and clearing of transactions on such an exchange, and no domestic regulator has the power to compel enforcement of the rules of the foreign exchange or the laws of the foreign country. Moreover, such laws or regulations will vary depending on the foreign country in which the transaction occurs. For these reasons, customers who trade on foreign exchanges may not be afforded certain of the protections which apply to domestic transactions, including the right to use domestic alternative dispute resolution procedures. In particular, funds received from customers to margin foreign futures transactions may not be provided the same protections as funds received to margin futures transactions on domestic exchanges. Before you trade, you should familiarize yourself with the foreign rules which will apply to your particular transaction.
- (8) Finally, you should be aware that the price of any foreign futures or option contract and, therefore, the potential profit and loss resulting there from, may be affected by any fluctuation in the foreign exchange rate between the time the order is placed and the foreign futures contract is liquidated or the foreign option contract is liquidated or exercised.

THIS BRIEF STATEMENT CANNOT, OF COURSE, DISCLOSE ALL THE RISKS AND OTHER ASPECTS OF THE COMMODITY MARKETS.

I hereby acknowledge that I have received and understood this risk disclosure statement.

.....  
Date

.....  
Signature of Customer



## TRADING ON BEHALF OF NEW ZEALAND CUSTOMERS AND ANNUAL ATTESTATION

[1801] A Trading Participant, other than a Principal Trader, must provide an annual attestation as set out in the Procedures.

Introduced 18/01/17

[1802] A Trading Participant, other than a Principal Trader, may enter transactions on behalf of New Zealand Customers if it complies with the conditions set out in the Procedures.

Introduced 18/01/17

### Procedure 1801 – Annual Attestation

Before 31 January each year the Participant must provide the following signed attestation to ASX Compliance regarding its activity for the previous calendar year:

1. [Insert name of Participant] is/is not required to be licensed as a derivatives issuer under Part 6 of the NZ Financial Markets Conduct Act 2013;
2. Where [Insert name of Participant] is required to be licensed under 1, the Participant attests:
  - (a) that it holds a current licence; and
  - (b) that it has made the disclosures to new clients set out in ASX 24 Procedure 1802(2).

Introduced 18/01/17

### Procedure 1802 – Trading on behalf of New Zealand Participants

#### **1. Demonstration of Derivatives Issuer Licence**

A Participant who is making Regulated Offers, as defined in the legislation, of derivatives in New Zealand within the territorial scope of the New Zealand Financial Markets Conduct Act 2013 must demonstrate that it is licensed as a derivatives issuer under Part 6 of the Act (unless such a licence is not required).

#### **2. Disclosure By Participant to New Zealand Client**

Before a New Zealand Participant accepts the first order from a client in New Zealand to deal on the Market Operator, the Participant is required to disclose the following:

- (a) the Market Operator's principal place of business is located in Australia;
- (b) the Market Operator and the market is regulated primarily under the regulatory regime of Australia;
- (c) the rights and remedies of, and compensation arrangements for, investors who acquire products on the Market Operator's market may differ from the rights and remedies of, and compensation arrangements for, investors who acquire products offered on a New Zealand based market;
- (d) New Zealand investors who acquire products on the Market Operator's market may be subject to the effects of changes in currency exchange rates.

Note: Pursuant to the conditions of the New Zealand Financial Product Market Licence (Australian Securities Exchange Limited) 2014, the Market Operator is obliged to ensure that

New Zealand Participants, being a Participant who is making Regulated Offers of derivatives in New Zealand, is adequately licensed and has made certain disclosures to clients. The New Zealand Financial Markets Authority has agreed that an annual attestation of the above matters will meet the Market Operator requirements.

Rules [1801] – [1802] are effective on 18 January 2017. For 2017 only, Participants will have until 31 March 2017 to provide the attestation referred to in Procedure 1801.1 confirming that the Participant was/was not required to be licensed as a derivatives issuer under Part 6 of the NZ Financial Markets Conduct Act 2013 in the 2016 calendar year and if required to attest under Procedure 1801.2(a) that it holds a current licence. The attestations required under Procedure 1801.2(b) regarding disclosure to new clients will be enforced from 31 January 2018.

Introduced 18/01/17

**End of Section. Next page is no. 201.**