



## **ASX CLEAR (FUTURES) OPERATING RULES**

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## PART 7 PROCEDURES ON A DEFAULT

### 70 Introduction

- 70.1 This Part of the Rules contains provisions detailing circumstances in which a Clearing Participant will be deemed to have defaulted on its obligations to ASX Clear (Futures), the consequences of such default and the powers of ASX Clear (Futures) in that regard.
- 70.2 The OTC Rules contain supplementary provisions which apply if the Clearing Participant is an OTC Participant. These supplementary provisions do not limit the application of this Part of the Rules to an OTC Participant or any other Clearing Participant.

Introduced 01/07/13

### 71 Existence of Default

- 71.1 (a) A Clearing Participant shall immediately notify the Managing Director of ASX Clear (Futures) if an event of Default occurs under Rule 71.3, or if the Clearing Participant has reasonable grounds to suspect that an event of Default may occur.
- (b) Where there is in the opinion of the Board or Managing Director an event of Default as set out in Rule 71.3 with respect to a Clearing Participant, the Board or Managing Director may declare the Clearing Participant to be in Default and for the purpose of the Rules that Clearing Participant shall be taken to have Defaulted.

Amended 11/02/14

#### 71.2 Deleted

#### 71.3 Events of Default referred to in Rule 71.1 are where:

- (a) the Clearing Participant fails to meet any of its obligations under Open Contracts or the Rules or Exchange Operating Rules or any agreement or understanding entered into with ASX Clear (Futures) or fails to comply with any reasonable directions of ASX Clear (Futures);
- (b) Deleted
- (c) the Clearing Participant fails to pay Initial Margins or Variation Margins or Daily Settlement Amounts or Intra Day Margins or Extra Margins within the period provided by these Rules;
- (d) the Clearing Participant fails to pay an amount or amounts other than an amount or amounts to which paragraph (c) is applicable in total exceeding A\$1,000, which is due and payable to ASX Clear (Futures);
- (e) an administrator or similar person is appointed to the Clearing Participant or a related body corporate of the Clearing Participant;
- (f) except for the purposes of a solvent reconstruction or amalgamation previously notified to ASX Clear (Futures):
- (i) an application or an order is made, proceedings are commenced, a resolution is passed or proposed in a notice of meeting or an application to a court or other steps are taken for:

- (A) the winding up, dissolution or official management or administration of the Clearing Participant or a related body corporate of the Clearing Participant; or
  - (B) the Clearing Participant or a related body corporate of the Clearing Participant enters into any arrangement, compromise or composition with or assignment for the benefit of its creditors or any class of them; or
- (ii) the Clearing Participant ceases or suspends or threatens to cease or suspend substantially all of its business or threatens to dispose of substantially all of its assets; or
- (iii) the Clearing Participant is or is deemed under any applicable legislation to be unable to pay its debts as and when they fall due (other than as a result of failure to pay a debt or claim the subject of a good faith dispute) or stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
- (g) the Clearing Participant or a related body corporate of the Clearing Participant is suspended, expelled or terminated as a member or participant of, or subject to any sanction imposed by, or declared in default or non-compliance under the rules of, any Australian or overseas, futures, securities, commodity or stock exchange or market or any other Australian or overseas clearing and settlement facility or is subject to any sanction imposed by any Australian or overseas regulatory authority;
- (ga) the Clearing Participant has failed to comply with a determination made by an Old Tribunal (as defined in Rule 12B) pursuant to the Old Australian Securities Exchange Disciplinary Processes and Appeals Rulebook (as defined in Rule 12B);
- (gb) the Clearing Participant fails to comply with any action taken by ASX Clear (Futures) in accordance with Rule 9A.2(f) or the provisions of the ASX Enforcement and Appeals Rulebook (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 ASX Enforcement and Appeals Rulebook);
- (h) with respect to all or any of the assets and undertaking of the Clearing Participant or a related body corporate of the Clearing Participant:
  - (i) a receiver, receiver and manager, administrative receiver, administrator or similar officer is appointed;
  - (ii) a Security Interest is enforced; or
  - (iii) a distress, attachment, or other execution is levied or enforced.
- (i) an investigator, inspector or other officer is appointed or an investigation is directed or commenced under the Corporations Act or any other legislation to investigate all or any part of the affairs of the Clearing Participant or a related Company of the Participant, in circumstances which are material to its capacity to meet its obligations to ASX Clear (Futures);
- (j) anything analogous to anything referred to in paragraphs (a) to (i) inclusive, or having substantially similar effect, occurs with respect to the Clearing Participant or a related body corporate of the Clearing Participant including, without limitation, anything occurring outside Australia or under the law of a jurisdiction other than Australia;
- (k) the Clearing Participant is the subject of a notice under any insurance referred to in Rule 7.1(e), or any other insurance taken out by ASX Clear

- (Futures) to enable it to meet its obligations to Clearing Participants which affects the amount or conditions or operation of such insurance;
- (l) there is an event deemed or described as a default by the Exchange Operating Rules or as otherwise provided in the Rules including a failure to comply with the requirements of Rule 9 or Exchange Operating Rules relating to position limits;
  - (m) the Clearing Participant acts fraudulently or in a misleading or deceptive manner with respect to any Open Contract or Market Contract the registration of which gave rise to an Open Contract;
  - (n) the Clearing Participant fails to comply, or indicates that it will or may fail to comply, with any of the Rules or the Procedures or the terms of any agreement with ASX Clear (Futures);
  - (o) upon request by ASX Clear (Futures), which may be made at any time, the Clearing Participant fails to confirm on or before the cut-off time reasonably specified by ASX Clear (Futures) in its request that it is able to pay its debts as they become due and payable; and
  - (p) any other event or series of events, whether related or not, occurs (or appears likely to occur) which in the opinion of the Board or Managing Director has (or appears likely to have) a material effect on the capacity of the Clearing Participant to meet its obligations to ASX Clear (Futures).

Amended 01/08/10, 15/07/11, 15/06/15, 23/07/18, 06/07/20

## **72 Powers of ASX Clear (Futures) Upon A Default and Determination of A Loss**

72.1 Upon a Default by a Clearing Participant ASX Clear (Futures) shall in its absolute discretion have the power to do all or any of the following in any order:

- (a) to Close Out all or any Open Contracts of the Clearing Participant in Default including in its absolute discretion Open Contracts in the Client Clearing Account by Closing Out any opposite positions in any House Clearing Account or Client Clearing Account and/or by buying or selling opposite positions on the Exchanges Markets as if a request to Close Out had been made by the Clearing Participant in Default pursuant to Rule 46 and to appropriate any excess after the application of Rule 47 or 48. Without limitation, a Close Out may occur by the matching of opposite positions which are held in different Accounts or Client Sub-Accounts of the Clearing Participant in Default. The prices attributable to the Close Out of any Open Contracts is to be determined by ASX Clear (Futures) in its discretion provided that the price is fair and equitable as between Open Contracts regardless of the Account in which they were registered and whether they were closed out on- or off-market. Without limitation, if any two Clearing Participants are in default and hold Open Contracts that ASX Clear (Futures) determines to be opposite positions, ASX Clear (Futures) shall in its absolute discretion have the power to Close Out these Open Contracts by the matching of these opposite positions. The price attributable to the Close Out of such Open Contracts is to be determined by ASX Clear (Futures) in its discretion;
- (aa) to terminate all or any Open Contracts (other than OTC Open Contracts) of the Clearing Participant in Default (including Open Contracts in the Client Clearing Account), and to auction, in accordance with the Procedures,
  - (i) Open Contracts newly established by ASX Clear (Futures) which, taken as a whole, are equivalent to all or some of the Open Contracts of the Clearing Participant in Default; and

- (ii) Open Contracts arising from ASX Clear (Futures) hedging the portfolio of the Clearing Participant in Default in accordance with Rule 72.2,

(such Open Contracts to be known as **DM Auction Transactions**);

**Explanatory Note:**

Refer to Rules 72.1B and 72.2 and Procedure 72.1(aa) Powers of ASX Clear (Futures) Upon A Default and Determination of A Loss (DM Auction Procedures)

- (b) to sell, realise, apply and set off any monies, securities, collateral or other property deposited with ASX Clear (Futures) by the Clearing Participant in Default by way of Initial Margin, Commitment or otherwise (whether or not arising from obligations under the Rules) and to apply the proceeds towards satisfaction of any amount payable by the Clearing Participant in Default to ASX Clear (Futures) under or in connection with these Rules and the OTC Rules, without being required to give notice to or obtain the consent of the Clearing Participant in Default or any court order, with full power to execute any documents in its own name or as attorney for the Clearing Participant in Default for that purpose, PROVIDED ALWAYS that any monies, securities, collateral or other property deposited with ASX Clear (Futures) with respect to Open Positions designated to a Client Clearing Account or which are subject to a written agreement under Regulation 7.8.02(3) of the Corporations Regulations 2001, or an acknowledgment under Regulation 10 of the Futures Industry (Client Funds) Regulations 1990 of New Zealand, may be used to meet obligations in a Client Clearing Account and shall not be used to meet any obligations in a House Clearing Account;
- (ba) to re-hypothecate any securities, collateral or other property deposited with ASX Clear (Futures) by the Clearing Participant in Default by way of Initial Margin, Extra Margin or otherwise (whether or not arising from obligations under the Rules) for the purpose of managing the Default;
- (c) to apply any surplus in any House Clearing Account of the Clearing Participant in Default to any deficiency on any Client Clearing Account of the Clearing Participant in Default;
- (d) to Transfer pursuant to Rule 74.1 all or any Open Positions designated to a Client Clearing Account of the Clearing Participant in Default to another Clearing Participant with the written authority of such transferee Clearing Participant, together with any Initial Margins which in the opinion of ASX Clear (Futures) are held with respect to such Open Positions;
- (e) to Exercise or Abandon any Option Contract of the Clearing Participant in Default. Any such Exercise or Abandonment shall be deemed to have been effected by the Clearing Participant which is the party to the Option Contract;
- (f) notwithstanding any direction given under Rule 63, to itself give or take delivery of any Commodity;
- (g) to Close Out any remaining Open Contracts of the Clearing Participant in Default in the manner referred to in Rule 72.2;
- (h) terminate Open Contracts of the Clearing Participant in Default at a price determined by ASX Clear (Futures) subject to these Rules;
- (i) to terminate the Clearing Participant in Default's rights and status as a Clearing Participant in accordance with Rule 72.1A;
- (j) to do any thing permitted by the OTC Rules; and

- (k) to do all such other necessary acts and things as are ancillary or incidental to the execution of ASX Clear (Futures)' powers enumerated under these Rules in connection with the Default, provided that, for the avoidance of doubt, in exercising power under paragraphs (a) to (k), ASX Clear (Futures) may not:
  - (i) affect the order in which assets are applied under Rule 7.1; or
  - (ii) Invoice Back or Force Allocate Open Contracts to another Clearing Participant.

Amended 03/06/97, 19/05/98, 01/07/13, 11/02/14, 01/10/15, 06/07/20, 29/11/21, 01/02/22

- 72.1A (a) Subject to Rules 72.1A(d) and (e), a termination of the rights and status of a Clearing Participant in Default is not effective unless:
- (1) ASX Clear (Futures) has given notice of termination in writing to the Clearing Participant;
  - (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), or such obligations have been satisfied following the exercise of ASX Clear (Futures)'s powers under Rules 72.1 or 73;
    - (B) it is not the subject of any disciplinary proceedings or enforcement action within the jurisdiction of ASX Clear (Futures);
    - (C) it has no Open Contracts.
- (b) Following the Clearing Participant's receipt of the notice of termination referred to in Rule 72.1A(a)(1) above, the Clearing Participant may not use the clearing facilities provided by ASX Clear (Futures) in accordance with these Rules except with the prior written consent of ASX Clear (Futures).
- (c) Subject to Rules 72.1A(d) and (e):
- (1) termination will be effective at the end of the last day of the quarter in which the Clearing Participant meets the conditions in Rule 72.1A(a) 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 termination 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 72.1A(a)(2) or the effectiveness of the termination of the rights and status of the Clearing Participant in Default 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 in Default or any accrued obligations which the Clearing Participant in Default has to ASX Clear (Futures), a Related Body Corporate of ASX Clear (Futures) or to other Clearing Participants.
- (e) Without limiting Rule 72.1A(d) above, following the termination of the rights and status of the Clearing Participant in Default becoming effective:
- (1) the Rules continue to apply and ASX Clear (Futures) will continue to have jurisdiction in respect of the Clearing Participant in Default

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 in Default or by any other person for whose conduct the Clearing Participant in Default was responsible;

- (2) the Clearing Participant continues to be bound by any indemnity given by the Clearing Participant in Default under these Rules; and
- (3) other Rules continue to apply in respect of the Clearing Participant in Default to the extent required to give effect to Rules 72.1A(e)(1) and (2).

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

- 72.1B (a) By way of supplement to Rule 72.1(aa) above, and not by limitation, if a Clearing Participant is in Default then ASX Clear (Futures) can declare:
- (1) that the obligations of the Clearing Participant and ASX Clear (Futures) under relevant Open Contracts (other than OTC Open Contracts) of the Clearing Participant (including Open Contracts in the Client Clearing Account) are to be the subject of a termination; and
  - (2) the time at which such termination is to be effective (referred to as the **Termination Time**).
- (b) The Open Contracts which are the subject of such a declaration under Rule 72.1B(a) may relate to either House Positions or Client Positions (or both) and are referred to as **Terminated Open Contracts**.
- (c) If ASX Clear (Futures) makes such a declaration under Rule 72.1B(a) then the present and future obligations of ASX Clear (Futures) and the Clearing Participant (and if applicable, the relevant CPM Client) to make payments under the terms of the Terminated Open Contracts (including payments of Variation Margin) are terminated and the payments are no longer required to be made.

**Explanatory Note:**

Following termination of Open Contracts relating to Client Positions, such positions cease to be Client Positions and may be combined with Terminated Open Contracts relating to House Positions.

- (d) ASX Clear (Futures) may, at any time, calculate a **Termination Value** in respect of one or more Terminated Open Contracts as selected by ASX (Clear) Futures. Without limiting the factors which ASX Clear (Futures) may take into account in determining such Termination Value, it may take into account its determination of:
- (1) the value of obligations which fell due in connection with the Terminated Open Contract(s) (including payment of Variation Margin) before the Termination Time but which have not been performed;
  - (2) the value of obligations which would have been due for performance under the Terminated Open Contract(s) after the Termination Time if the Terminated Open Contract(s) had not been terminated (including payment of Initial Margin and Variation Margin); and
  - (3) its losses, costs, charges and expenses in connection with the management of the Default of the relevant Clearing Participant with respect to the Terminated Open Contract(s) including, without limitation, costs and expenses associated with hedging any



exposure of ASX Clear (Futures) arising out of the Default, and amounts payable by it in respect of any DM Auction held in accordance with Rule 72.1(aa).

ASX Clear (Futures)' determination of a Termination Value is conclusive, but does not limit any of its rights under these Rules or at law.

- (e) ASX Clear (Futures) may include a Termination Value calculated by it in any netting conducted in accordance with Rule 72.3.
- (f) If Terminated Open Contracts involved in a default management process conducted in accordance with Rule 72.1(aa) relate to both House Positions and Client Positions of a Clearing Participant in Default, or the Open Positions of more than one Clearing Participant in Default, then ASX Clear (Futures):
  - (1) may combine any such Terminated Open Contracts so that they are treated as part of one or more portfolios at any time after the commencement of the default management process for the purpose of auction in accordance with the relevant powers under Rule 72.1(aa);
  - (2) is to allocate any losses, costs, charges and expenses in connection with that default management process between the relevant Clearing Participant(s) in Default and between the House Accounts, Client Accounts and Client Sub-Accounts of the relevant Clearing Participant(s) in Default which relate to those Terminated Open Contracts (referred to in this Rule 72.1B as a **Relevant Account**). The losses, costs, charges and expenses are to be calculated as of the time of combination of such Terminated Open Contracts and will be conducted by allocating any losses, costs, charges and expenses to each Relevant Account proportionately to its relative risk as determined by ASX Clear (Futures) using the value of Initial Margin calculated with respect to each Relevant Account at the time of combination of the Terminated Open Contracts; and
  - (3) in the case of a Relevant Account which is a Client Sub-Account, is to deduct any losses, costs, charges and expenses so attributed to that Client Sub-Account in accordance with (2) above from the Guaranteed Initial Margin Value of that Client Sub-Account in accordance with the Client Protection Model Provisions.

Introduced 01/02/22

72.2 ASX Clear (Futures) may offset or hedge any exposure arising from a Default by trading Market Contracts by means of:

- (a) trading on any trading system maintained by the Relevant Exchange through a Participant of the Relevant Exchange; or
- (b) by direct agreement with market participants or any other persons or as may be permitted or directed by the Relevant Exchange in accordance with Exchange Operating Rules,

and shall register any Market Contract so traded. ASX Clear (Futures) may auction the Open Contract so traded (in accordance with the Procedures) or Close Out the Open Contract so traded against Open Contracts of the Clearing Participant, as if such Market Contracts had been entered into by the Clearing Participant in Default.

Amended 01/02/22

**Explanatory Note:**

Refer to Rule 72.1(aa) and Procedure 72.1(aa) Powers of ASX Clear (Futures) Upon A Default and Determination of A Loss (DM Auction Procedures).

- 72.3 At any time, ASX Clear (Futures) may calculate a net amount or amounts due and payable by the Clearing Participant in Default to ASX Clear (Futures) or ASX Clear (Futures) to the Clearing Participant in Default separately in respect of the House Account and the Client Account, and demand immediate payment of any net amount payable by the Clearing Participant in Default to ASX Clear (Futures).

Without limitation, the amounts netted by ASX Clear (Futures) may include the amounts determined to be payable under, or in connection with, the OTC Rules or the Recovery Rules.

Without limiting any of its rights or powers, ASX Clear (Futures) agrees that it will exercise its rights under this Rule 72.3 to calculate a net amount with respect to the Clearing Participant in Default. ASX Clear (Futures) may exercise any of its rights and powers and take any other actions in connection with the Clearing Participant in Default before, or after, it does so.

Introduced 13/07/09 Amended 01/07/13, 11/02/14, 01/10/15

- 72.4 If a Clearing Participant has CPM Clients then the netting referred to in Rule 72.3 above is to be conducted separately in respect of each Client Sub-Account within the Client Account of that Clearing Participant and in respect of any remaining part of that Client Account. A net cash amount is to be payable in accordance with Rule 72.3 in respect of each separate netting which takes place.

Introduced 11/02/14

## **73 Loss**

- 73.1 Any deficiency in the Accounts of the Clearing Participant in Default or Clearing Participants in Default after the application of Rule 72.1 shall be termed the Loss of ASX Clear (Futures) on the Default.

- 73.1A ASX Clear (Futures) may attribute to the relevant Account(s) of the Clearing Participant in Default or Clearing Participants in Default any costs, losses, penalties, fines, taxes, damages and expenses which ASX Clear (Futures) may incur, including reasonable legal fees incurred, in connection with the Default of that Clearing Participant in Default or Clearing Participants in Default. If the costs, losses, penalties, fines, taxes, damages and expenses are attributable to more than one Clearing Participant in Default, the amount of those costs, losses, penalties, fines, taxes, damages and expenses will be attributed to each Clearing Participant in the amounts that ASX Clear (Futures), acting reasonably, determines to be appropriate.

Introduced 01/10/15

- 73.2 To meet any Loss ASX Clear (Futures) shall first apply up to the amount of the Loss, the Commitment of the Clearing Participant in Default made pursuant to the Rules.

- 73.3 Subject to the Rules, ASX Clear (Futures) shall meet any remaining Part of the Loss in accordance with paragraphs (c) to (h) of Rule 7.1.

Amended 01/07/13

- 73.4 Any amount later recovered from the Defaulting Clearing Participant shall to the extent of such recovery reduce the Loss of ASX Clear (Futures).

## **74 Clients Not in Default to Clearing Participant in Default**

- 74.1 Without prejudice to Rule 31.4 and without being under any obligation to do so the Board or Managing Director or the delegate of either may in their absolute discretion and with regard to the necessity to crystallise ASX Clear (Futures) position as soon as possible and after having regard to the liability or potential liability of ASX Clear (Futures) and any other relevant matter permit the Transfer to another Clearing Participant of all or any Open Contracts designated as Client Positions of a Clearing Participant in Default where ASX Clear (Futures) is advised by the Relevant Exchange that the Open Contract is held on behalf of a Client of the Clearing Participant which is not in default of its obligations to the Clearing Participant. For that purpose ASX Clear (Futures) may transfer monies from a Client Clearing Account of the Clearing Participant in Default to the relevant Clearing Account of the Clearing Participant to whom the Open Contract is being transferred. The Loss of ASX Clear (Futures) shall be adjusted accordingly.
- 74.2 A Transfer of Open Contracts under Rule 74.1 may be made subject to conditions including without limitation:
- (a) the receipt of the written authority of the Clearing Participant to whom the Open Contracts are to be transferred; or
  - (b) an indemnity from any person, or conditions relating to Margin to be provided to ASX Clear (Futures) before or after such transfer.
- 74.3 Where ASX Clear (Futures) permits a Transfer of Open Contracts pursuant to Rule 74.1 ASX Clear (Futures) may transfer such of the monies in or securities, collateral or property allocated to, a Client Clearing Account of the Clearing Participant as ASX Clear (Futures) believes is referable to such Positions.

## **75 Indemnity from Clearing Participants in Default**

- 75.1 Each Clearing Participant indemnifies and will keep indemnified ASX Clear (Futures) and its officers, representatives, agents and contractors against all actions, proceedings, claims, demands, damages, costs, expenses and any other amounts including any transaction taxes, goods and services taxes or any other duties or taxes (extending to include any taxes payable by ASX Clear (Futures) on a payment made under this indemnity) against or incurred by any of ASX Clear (Futures), its officers, representatives, agents or contractors arising out of or in connection with any event of Default by the Clearing Participant, or any action taken by, or any inaction by, any of ASX Clear (Futures) or its officers, representatives, agents or contractors in connection with the Default, to the extent that it was not caused by the negligence, fraud or wilful default of ASX Clear (Futures).

The rights, powers and remedies of ASX Clear (Futures) under this Rule 75.1 in relation to a Clearing Participant survive its termination or suspension as a Clearing Participant or termination of its authorisation to clear a category or categories of Market Contract.

Introduced 01/07/13

- 75A If a Futures Participant has agreed with an OTC Participant to clear DM Auction Transactions (as defined in the OTC Rules) that are Futures Contracts in respect of which the OTC Participant entered the winning Bid as defined in, and in accordance with, the OTC Handbook, then the Futures Participant must clear such DM Auction Transactions.

Introduced 01/07/13

**End of Section. Next page is no. 751.**