



## ASX CLEAR (FUTURES) OPERATING RULES

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## **PART 10 CLIENT PROTECTION MODEL PROVISIONS**

### **110 Introduction**

This Part of the Rules contains the provisions applicable to the Client Protection Model and these provisions are referred to as the “Client Protection Model Provisions”.

### **111 Application of Client Protection Model Provisions**

- 111.1 ASX Clear (Futures) may determine the time at which application of the Client Protection Model Provisions is to commence. ASX Clear (Futures) may make this determination at different times for different Market Contracts, Open Contracts, Clearing Participants or Clients (or different types of them).
- 111.2 ASX Clear (Futures) will give reasonable notice to all Clearing Participants in accordance with the Procedures of each proposed determination that the application of the Client Protection Model Provisions is to commence. However, any omission by ASX Clear (Futures) to provide this notice to one or more Clearing Participants does not affect the validity of any determination.
- 111.3 To the extent that the Client Protection Model Provisions are determined to apply to already existing Open Contracts which have been entered into on behalf of a Client then they are to apply from the time which has been determined as if the Client Protection Model Provisions applied at the time that the Open Contracts were entered into. Each Client is taken to have agreed to this by its entry into any Open Contract as a CPM Client, its holding of an Open Position as a CPM Client through its Clearing Participant, the opening of a Client Sub-Account with respect to it as a CPM Client, or the provision by it of any other consent or acknowledgment related to the application of the Client Protection Model Provisions (which the Client’s Clearing Participant is taken to provide on behalf of the Client at the time of the determination, to the extent that the Clearing Participant has been authorised to do so). Each of ASX Clear (Futures) and the Client’s Clearing Participant are bound to treat the Client as if the Client has so agreed to this (whether or not it has done so) from the time at which the Client Protection Model Provisions are determined to apply.
- 111.4 The Client Protection Model Provisions do not apply to a Market Contract, Open Contract, Clearing Participant or Client unless it falls within the scope of a determination made by ASX Clear (Futures) in accordance with this Rule 111.

### **112 Representations, acknowledgments and agreements**

- 112.1 Each CPM Client (by its entry into an Open Contract or its holding of an Open Position through its Clearing Participant) and each of its Clearing Participants is taken to represent and acknowledge to, and to agree with, ASX Clear (Futures) that:
- (a) it is bound by these Rules;
  - (b) ASX Clear (Futures) is not responsible or liable for the performance of any CPM Client or Clearing Participant;
  - (c) the CPM Client’s Clearing Participant is authorised to act and to take actions on the CPM Client’s behalf as contemplated by these Rules;
  - (d) if a CPM Client’s Clearing Participant Defaults then ASX Clear (Futures) may terminate or otherwise deal with the Client Positions of that CPM

- Client which are held with that Clearing Participant in accordance with these Rules (regardless of whether that CPM Client has defaulted);
- (e) the CPM Client's Clearing Participant is unconditionally authorised to provide any of the property provided to it by the CPM Client to ASX Clear (Futures) in accordance with these Rules in discharge of obligations incurred in connection with the Client Positions of that CPM Client. However, the Clearing Participant is also entitled to provide other property to ASX Clear (Futures) for this purpose;
  - (f) it has reviewed the privacy statement of ASX Clear (Futures) (which is available on ASX's website or by calling the ASX) which contains important information about how ASX Clear (Futures) may collect, use and disclose information about the CPM Client and the Clearing Participant (including whether ASX Clear (Futures) will transfer any information to overseas recipients) and consents to ASX Clear (Futures) collecting, using and disclosing information about the CPM Client and the Clearing Participant for the purposes set out in the privacy statement;
  - (g) the CPM Client's Clearing Participant has provided the CPM Client with, or directed the CPM Client to, a copy of the Client Protection Model Client Fact Sheet, in accordance with the Procedures;
  - (h) these Rules do not, are not intended to, and will not be construed to represent or imply a partnership, agency, fiduciary relationship, joint venture, distribution or any other category of commercial or personal relationship between ASX Clear (Futures) and any CPM Client recognised at law or in equity as giving rise to forms of specific rights and obligations;
  - (i) ASX Clear (Futures) is entitled to assume that all property provided to it by a Clearing Participant in accordance with these Rules is provided either by the sole legal and beneficial owner of that property or with the unconditional authority and consent of the legal and beneficial owner of that property. ASX Clear (Futures) is under no obligation to return the same property which it receives as, or in respect of, Margin under these Rules;
  - (j) any property transferred to ASX Clear (Futures), including assets attributed to an Individual Sub-Account for a CPM Client, is transferred free and clear of all interests, rights and encumbrances (subject to any security interest granted to ASX Clear (Futures) in accordance with the Rules and any lien routinely imposed on such property by the relevant clearance system for such property) and is to be held in accordance with these Rules. ASX Clear (Futures) does not hold any particular property transferred to it, including assets attributed to an Individual Sub-Account for a CPM Client in accordance with Rule 116.2A, on behalf of any particular CPM Client or a Clearing Participant and no CPM Client or Clearing Participant is entitled to assert any equitable or other interest or claim in any such property. For the purposes of this Part 10 and the Procedures:
    - (i) "attribute" means to make a record of certain assets to be used in the calculation of ASX Clear (Futures)' payment and delivery obligations in this Part 10, and "attributed" is to be construed accordingly; and
    - (ii) to the extent ASX Clear (Futures) has any payment or delivery obligations in connection with assets attributed to an Individual Sub-Account under this Part 10, ASX Clear (Futures) is obliged only to deliver to a CPM Client or a Clearing Participant (as applicable) equivalent assets. "Equivalent assets", in relation to any assets attributed to an Individual Sub-Account, means securities, cash or other assets (as applicable) which are of an

identical type, nominal value, description and amount to the specific assets so attributed;

- (k) the holding of Open Positions in respect of Open Contracts in a Client Sub-Account with respect to it will not, to the reasonable knowledge of the CPM Client and the Clearing Participant, cause ASX Clear (Futures) to breach any law, regulatory requirement or official directive, ruling or determination of any jurisdiction;
- (l) if the agreement between the CPM Client and its Clearing Participant relating to the provision of client clearing services to which these Client Protection Model Provisions apply is terminated then, unless otherwise agreed In Writing, the Clearing Participant will terminate all the CPM Client's OTC Open Contracts, but only after the lapse of a time period agreed between the CPM Client and the Clearing Participant; and
- (m) to the extent of any inconsistency with any agreement between the CPM Client and its Clearing Participant (including, without limitation, an agreement entered into in accordance with Rule 4.14(j)), these Client Protection Model Provisions prevail.

In addition, each CPM Client (by its entry into an Open Contract or its holding of an Open Position through its Clearing Participant) and each Clearing Participant is taken to provide each representation, acknowledgement and agreement specified in the applicable determination made by ASX Clear (Futures) in accordance with Rule 111.

These representations, acknowledgements and agreements by a CPM Client are included in the terms of each Open Contract and are a condition to the CPM Client's rights and entitlements under these Rules.

Amended 31/08/15

- 112.2 Without limiting the binding effect of Rule 112.1, each Clearing Participant must ensure that each CPM Client has agreed to be bound by these Rules.

## **113 Relationship and dealings**

- 113.1 With respect to Open Contracts entered into, or Open Positions held, by a Clearing Participant on behalf of a CPM Client, the Clearing Participant acts on behalf of the CPM Client as its agent. Further:
- (a) the Clearing Participant remains fully liable for all obligations to ASX Clear (Futures) in connection with those Open Contracts and those Open Positions including, without limitation, all obligations with respect to Margin and all other payments and deliveries; and
  - (b) each of the Clearing Participant, the CPM Client and ASX Clear (Futures) is a party to, and is bound by, those Open Contracts and those Open Positions in accordance with these Rules and is taken to have entered into the legal relationship which constitutes those Open Contracts and Open Positions; and
  - (c) the liability of the Clearing Participant to ASX Clear (Futures) is as principal obligor and it cannot be, and is not, discharged or otherwise affected by any act or omission of, or any matter in connection with, the CPM Client (including, without limitation, any release or concession given to any CPM Client, any lack or termination of authorisation of the Clearing Participant by the CPM Client, or the Open Contract being void or voidable against the CPM Client). If, despite this, the Clearing Participant's liability is discharged, then the Clearing Participant agrees that ASX Clear (Futures) is immediately entitled to the rights against that Clearing Participant to

which ASX Clear (Futures) was entitled immediately before the Clearing Participant's liability was so discharged; and

- (d) any obligation of a CPM Client or ASX Clear (Futures) with respect to an Open Contract entered into, or Open Position held, by a Clearing Participant on behalf of that CPM Client is discharged when it is performed by or for the benefit of, or discharged with respect to, that Clearing Participant in accordance with these Rules; and
- (e) although each of the Clearing Participant and its CPM Client are bound jointly and individually to those Open Contracts and Open Positions, without affecting any of its rights against the Clearing Participant, ASX Clear (Futures) agrees not to take action against a CPM Client personally for the performance of any obligation which is owing by that CPM Client's Clearing Participant.

When a Clearing Participant is acting on behalf of a CPM Client, each reference in these Rules (other than in these Client Protection Model Provisions) to a Clearing Participant as a party to a Market Contract, an Open Contract or an Open Position, or to the rights and obligations of a Clearing Participant under a Market Contract, an Open Contract or an Open Position, is taken to be a reference to the CPM Client and to the Clearing Participant acting in this capacity.

- 113.2 In respect of each Open Contract entered into, and each Open Position held, by a Clearing Participant on behalf of a CPM Client, the CPM Client will have the rights and entitlements against ASX Clear (Futures) set out in these Client Protection Model Provisions. Without limitation, the Clearing Participant holds these rights and entitlements on behalf of the CPM Client.

However, until such time as a Clearing Participant is in Default, and except to the extent set out in these Client Protection Model Provisions:

- (a) ASX Clear (Futures) is entitled to communicate and deal solely with the Clearing Participant in respect of all matters in connection with those Open Contracts and Open Positions;
- (b) no CPM Client of a Clearing Participant or any Nominated Person in respect of an Individual Sub-Account is entitled to communicate or deal directly with ASX Clear (Futures) (without limiting ASX Clear (Futures)' ability to communicate or deal directly with a CPM Client or a Nominated Person if ASX Clear (Futures) chooses to do so, in its sole discretion);
- (c) ASX Clear (Futures) has no obligation to make any payments or deliveries to, or at the direction of, any CPM Client or Nominated Person; and
- (d) all payments and deliveries in respect of the Open Contracts and Open Positions held by a Clearing Participant on behalf of a CPM Client are to be made between ASX Clear (Futures) and the CPM Client's Clearing Participant, not the CPM Client directly (or any Nominated Person in respect of an Individual Sub-Account).

- 113.3 If a Clearing Participant is in Default then each CPM Client of the Clearing Participant or, if applicable to the relevant Client Sub-Account, the relevant Nominated Person is entitled to communicate directly with ASX Clear (Futures) in accordance with these Client Protection Model Provisions.

- 113.4 A Person may be a CPM Client of more than one Clearing Participant.

- 113.5 ASX Clear (Futures) is entitled to deal with each CPM Client as principal and not as trustee, as agent or as acting in any other capacity. ASX Clear (Futures) is not bound or compelled in any way to recognise any equitable, contingent, future, partial or other interest in any rights or entitlements of any CPM Client including, without

limitation, any person on whose behalf the CPM Client is acting (such as any Nominated Person and whether or not ASX Clear (Futures) has notice of any such interest) except the absolute right of the CPM Client to those rights and entitlements. The rights and entitlements of a CPM Client under these Rules are not able to be disposed of, transferred, assigned, made the subject of a trust over or encumbered without the consent of ASX Clear (Futures).

## **114 Registration of contracts**

- 114.1 Market Contracts submitted for registration on behalf of a CPM Client are to be submitted in accordance with these Rules and the Procedures. In accordance with these Rules and the Procedures, a Clearing Participant may submit a Market Contract for registration on behalf of the CPM Client. The Clearing Participant must designate the Client Sub-Account of the Clearing Participant in which a prospective Open Contract entered into on behalf of a CPM Client is to be registered in accordance with the Procedures.

## **115 Client Sub-Accounts**

- 115.1 ASX Clear (Futures) will maintain Client Sub-Accounts in a Clearing Participant's Client Clearing Account in order to record the Open Positions which that Clearing Participant holds on behalf of its CPM Clients. However, the Client Sub-Accounts of a Clearing Participant's Client Clearing Account do not form separate Client Clearing Accounts for the purpose of these Rules and each Clearing Participant has only a single Client Clearing Account with ASX Clear (Futures). A Clearing Participant is responsible to ASX Clear (Futures) for all obligations owed to ASX Clear (Futures) in respect of every Client Sub-Account in that Clearing Participant's Client Clearing Account.
- 115.2 A Client Sub-Account may be either an Individual Sub-Account or an Omnibus Sub-Account. Although ASX Clear (Futures) may maintain records for further partitions of these Client Sub-Accounts, those records are not separate Client Sub-Accounts for the purpose of these Rules and the maintenance of those records does not limit Rule 113.5.

### **Explanatory Note**

Separate Client Sub-Accounts will be maintained for different types of Market Contract which are subject to the Client Protection Model.

- 115.3 A Clearing Participant may request that ASX Clear (Futures) maintains an Individual Sub-Account within that Clearing Participant's Client Clearing Account for a CPM Client of the Clearing Participant. Such request must be made in accordance with these Rules and the Procedures. If ASX Clear (Futures) accepts a request from a Clearing Participant then an Individual Sub-Account is to be opened for the CPM Client. The Individual Sub-Account for a CPM Client is to record the Open Positions held by the Clearing Participant designated to the Individual Sub-Account on behalf of that CPM Client only. The Individual Sub-Account for a CPM Client may also record the attribution of assets transferred by the Clearing Participant in respect of its Client Clearing Account in accordance with Rule 116.2A. This does not preclude the Clearing Participant from requesting that ASX Clear (Futures) also maintain an Omnibus Sub-Account in respect of Open Positions of that, and other, CPM Clients or an Individual Sub-Account in respect of other Open Positions of that CPM Client.

Amended 31/08/15

- 115.4 The details of a Person which is to be a "Nominated Person" in respect of an Individual Sub-Account may be notified to ASX Clear (Futures) in accordance with

the Procedures. Only one Person can be a Nominated Person in respect of an Individual Sub-Account at any time.

- 115.5 The Omnibus Sub-Account in respect of one or more CPM Clients is to record the Open Positions held by the Clearing Participant on behalf of those CPM Clients only. ASX Clear (Futures) is not obliged to make separate calculations in respect of any CPM Client relating to an Omnibus Sub-Account. However, ASX Clear (Futures) may choose to do so at its discretion. Assets transferred by a Clearing Participant in respect of its Client Clearing Account cannot be attributed to an Omnibus Sub-Account.

An Omnibus Sub-Account cannot have a Nominated Person.

Amended 31/08/15

- 115.6 Open Positions for a CPM Client of a Clearing Participant may be held in one or more Client Sub-Accounts for that CPM Client. If the same Person is a CPM Client of more than one Clearing Participant then ASX Clear (Futures) will treat the Client Sub-Accounts of each Clearing Participant for that CPM Client as being separate. However, ASX Clear (Futures) may choose to make calculations for its own purposes with respect to such a Person, across the accounts held for that Person with multiple Clearing Participants.

- 115.7 Each Clearing Participant must maintain appropriate records identifying all relevant information in respect of its CPM Clients and must ensure that its books and records accurately reflect at all times the Open Contracts and Open Positions held by a Clearing Participant on behalf of each of its CPM Clients. For the purpose of opening and maintaining the Client Sub-Accounts, each Clearing Participant must provide ASX Clear (Futures) with the information required by ASX Clear (Futures) from time to time, in respect of each CPM Client and as set out in the Procedures and validate this information at least annually.

Amended 31/08/15

#### **Explanatory Note**

In respect of a CPM Client, this Rule does not require a Clearing Participant to maintain records identifying any information in connection with any Person other than the CPM Client.

## **116 Margin**

- 116.1 The Open Positions recorded in a Client Sub-Account are to be used to calculate the Initial Margin required in respect of that Client Sub-Account.
- 116.2 Payments of the Initial Margin in respect of a Client Clearing Account are to be made by the relevant Clearing Participant and not by the CPM Clients. The Clearing Participant must ensure that the margin obligations with respect to its Client Clearing Account are met in accordance with these Rules, regardless of the amount or type of collateral provided to it by its CPM Clients.
- 116.2A ASX Clear (Futures) will attribute to an Individual Sub-Account for a CPM Client of a Clearing Participant cash and non-cash assets transferred by the Clearing Participant in respect of its Client Clearing Account, in accordance with instructions given by the Clearing Participant under the Procedures. The attribution of assets to an Individual Sub-Account will remain effective for the purposes of these Rules until varied by further instructions from the Clearing Participant, provided that ASX Clear (Futures) may, in its sole discretion, amend the record of attribution to reflect any amendments in the nature or characteristics of the cash or non-cash assets following the conversion, sub-division, consolidation, takeover, exchange or similar event with respect to such assets. The value, as determined by ASX Clear



(Futures), of assets attributed to an Individual Sub-Account from time to time can be less than, equal to or more than the Initial Margin required in respect of the Individual Sub-Account at that time. Any assets transferred by a Clearing Participant in respect of its Client Clearing Account that are not attributed to an Individual Sub-Account in accordance with this Rule 116.2A, are not to be attributed to any Client Sub-Account.

Introduced 31/08/15

116.3 The Collateral Value in respect of a Client Sub-Account is the greater of:

- (a) the value (in the currency in which the request for Initial Margin was made) of Initial Margin calculated by ASX Clear (Futures) in respect of the Client Sub-Account by reference to the Open Positions recorded in the Client Sub-Account; and
- (b) the value, as determined by ASX Clear (Futures) from time to time, of all cash and non-cash assets (if any) attributed by ASX Clear (Futures) to the Client Sub-Account in accordance with Rule 116.2A.

The Collateral Value in respect of a Client Sub-Account is not determined by reference to the value of assets which may have been provided by the relevant CPM Client or CPM Clients to their Clearing Participant.

Amended 31/08/15

116.4 OTC Allocated Futures Contracts may be taken into account in the calculation of the Initial Margin and OTC Initial Margin with respect to Individual Sub-Accounts in accordance with these Rules and Procedures if the relevant Open Contracts and OTC Open Contracts are held in Individual Sub-Accounts for that CPM Client with the same Clearing Participant and, if a Nominated Person for any such Individual Sub-Accounts has been notified to ASX Clear (Futures), provided that any such Individual Sub-Accounts have the same Nominated Person.

116.5 In accordance with these Rules, the Collateral Value in respect of a Client Sub-Account is to be treated as belonging to the relevant CPM Clients (in the case of an Omnibus Sub-Account) or CPM Client (in the case of an Individual Sub-Account) and is not to be margin for, or secure performance of, the obligations of the Clearing Participant (except in connection with the Open Contracts or other obligations of the relevant CPM Client or CPM Clients), CPM Clients other than those for which the Client Sub-Account is being held, or any other person. However, ASX Clear (Futures) is entitled to hold, commingle and invest all assets and property received by it in respect of the Margin obligations relating to Client Positions with other assets and property.

Amended 31/08/15

116.6 If the value of the Initial Margin and any excess deposits made pursuant to Rule 49 or OTC Rule 5.10 held in the Client Clearing Account of a Clearing Participant is less than the aggregate Collateral Value of the Client Sub-Accounts comprised in that Client Clearing Account then no withdrawal of assets may be made from any Clearing Account of that Clearing Participant (other than a transfer from the House Clearing Account of that Clearing Participant to its Client Clearing Account) until the shortfall is remedied to the satisfaction of ASX Clear (Futures).

Amended 31/08/15

116.7 Nothing in this Rule 116 restricts the application of, or other dealing with, the Client Clearing Account on the Default of a Clearing Participant in accordance with these Rules.

## 116A Reliance on Information

ASX Clear (Futures) is entitled to rely solely on the information provided to it by a Clearing Participant for the purpose of maintaining its Client Sub-Accounts including, without limitation, in attributing assets transferred by a Clearing Participant in respect of its Client Clearing Account to Individual Sub-Accounts in accordance with Rule 116.2A and making transfers between Client Sub-Accounts held for the same CPM Client with different Clearing Participants in accordance with Rule 119.4. ASX Clear (Futures) has no obligation to verify this information or make any investigations. The records maintained by ASX Clear (Futures) for its Client Sub-Accounts are conclusive.

Introduced 31/08/15

## 117 Transfer

- 117.1 If a Person is a CPM Client of two Clearing Participants and that CPM Client and those two Clearing Participants have agreed that Open Positions recorded in a Client Sub-Account (which may be an Individual Sub-Account or an Omnibus Sub-Account, as agreed between the parties) for that CPM Client with one of those Clearing Participants will be transferred by ASX Clear (Futures) to another Client Sub-Account for that CPM Client with the other Clearing Participant then the receiving Clearing Participant will notify ASX Clear (Futures) of the Open Positions to be transferred in accordance with the Procedures.

This applies regardless of whether a Nominated Person has been notified to ASX Clear (Futures) with respect to any Client Sub-Account.

- 117.2 Each Clearing Participant is required to implement and follow internal processes designed to assist the Clearing Participant with considering a CPM Client's request to transfer Open Positions held with that Clearing Participant to another Clearing Participant. Each Clearing Participant agrees to follow those processes where its CPM Client requests a transfer of Open Positions held with that Clearing Participant.

- 117.3 If:

- (a) ASX Clear (Futures) has been notified of Open Positions which are to be transferred;
- (b) ASX Clear (Futures) has not been notified by either Clearing Participant that the CPM Client has defaulted or is insolvent or bankrupt;
- (c) neither Clearing Participant is in Default;
- (d) ASX Clear (Futures) is satisfied that it has received sufficient margin from the receiving Clearing Participant in order to enable the transfer; and
- (e) ASX Clear (Futures) has not determined (in its sole discretion) that the transfer should not be effected,

then the transfer is to be effected between the Client Sub-Accounts of the Clearing Participants in respect of such CPM Client in accordance with, and subject to, these Rules and the Procedures. Each of the Clearing Participants agree to take such actions and provide such information as is needed to effect the transfer under these Rules.

### Explanatory Note

Provided that sufficient Margin has been provided and ASX Clear (Futures) agrees to such transfer, absent a default of either the CPM Client or the relevant Clearing Participants, the transfer of such Open Positions will be effected by ASX Clear (Futures) in accordance with this Rule 117, Rule 33.5, OTC Rule 4.13 and the Procedures and the OTC Handbook, as applicable. Each of the Clearing

Participants is required to take such action or provide such information as may be required by ASX Clear (Futures) in order to effect such transfer of Open Positions.

- 117.4 If a CPM Client and its Clearing Participant have agreed that Open Positions recorded in a Client Sub-Account (which may be an Individual Sub-Account or an Omnibus Sub-Account as agreed between the parties) for that CPM Client with that Clearing Participant will be transferred by ASX Clear (Futures) to another Client Sub-Account for that CPM Client with that Clearing Participant then the Clearing Participant will notify ASX Clear (Futures) of the Open Positions to be transferred in accordance with the Procedures.

If:

- (a) ASX Clear (Futures) has been notified of Open Positions which are to be transferred;
- (b) ASX Clear (Futures) has not been notified by the Clearing Participant that the CPM Client has defaulted or is insolvent or bankrupt;
- (c) the Clearing Participant is not in Default; and
- (d) ASX Clear (Futures) has not determined (in its sole discretion) that the transfer should not be effected,

then the transfer is to be effected between the Client Sub-Accounts of the Clearing Participant in respect of such CPM Client in accordance with, and subject to, these Rules and the Procedures. The Clearing Participant agrees to take such actions and provide such information as is needed to effect the transfer under these Rules.

## **118 CPM Client Default**

- 118.1 If a Clearing Participant which has not Defaulted notifies ASX Clear (Futures) in the manner set out in the Procedures that a CPM Client of the Clearing Participant has defaulted then:

- (a) no further Open Contracts can be registered in respect of that CPM Client except for the purpose of managing the default of the CPM Client, subject to applicable law; and
- (b) ASX Clear (Futures) will, on the request of the Clearing Participant in accordance with the Procedures, transfer some or all of the Open Positions held by the Clearing Participant on behalf of that CPM Client to the House Account for the Clearing Participant (in which case these Open Positions become House Positions and cease to be Client Positions or held on behalf of the CPM Client in accordance with these Rules).

This applies regardless of whether a Nominated Person has been notified to ASX Clear (Futures) with respect to any of the Client Sub-Accounts of that CPM Client.

In connection with any transfer of Open Positions of a defaulted CPM Client, unless otherwise directed by ASX Clear (Futures), the relevant Client Sub-Account and the House Account are to be margined in accordance with the Rules and the Procedures.

- 118.2 ASX Clear (Futures) is entitled to rely solely on the notification by the Clearing Participant as to the default of its CPM Client and has no obligation to conduct any investigations to verify whether a default has occurred or to communicate with the CPM Client or any Nominated Person in respect of it. If ASX Clear (Futures) is notified by a Clearing Participant that a Person which is a CPM Client of that Clearing Participant has defaulted then this does not oblige ASX Clear (Futures) to treat that Person as defaulted with respect to all other Clearing Participants in respect of which that Person is a CPM Client.

- 118.3 ASX Clear (Futures) is not to treat a CPM Client as in default until its Clearing Participant has notified ASX Clear (Futures) accordingly. However, if an event of Default is subsisting with respect to the Clearing Participant, or the Clearing Participant has Defaulted, ASX Clear (Futures) may, in its sole discretion, treat the CPM Client as being in default if it determines, based on any information it considers appropriate:
- (a) that an event has occurred which has (or is likely to have) a material effect on the capacity of the CPM Client to meet its obligations with respect to Open Positions; or
  - (b) that an event has occurred in respect of the CPM Client which, if it happened with respect to a Clearing Participant, would be an event of Default.
- 118.4 Provided that the Clearing Participant has not Defaulted at the time at which ASX Clear (Futures) is notified by it of the CPM Client's default then the process in this Rule 118 is to be followed, even if the Clearing Participant subsequently Defaults. In the event that the Clearing Participant subsequently Defaults, Rules 119 and 120 will not apply to the Open Positions of that CPM Client and the Open Positions (and the related margin) held by that Defaulted Clearing Participant on behalf of the defaulted CPM Client are to be treated as House Positions of the Defaulted Clearing Participant.

## 119 Clearing Participant Default (Application to Individual Sub-Accounts)

- 119.1 A CPM Client of a Clearing Participant may notify ASX Clear (Futures) in accordance with the Procedures of the details of one or more other Clearing Participants (each an **"Alternate Clearing Participant"**) to which Open Positions recorded in an Individual Sub-Account for that CPM Client held by the Defaulted Clearing Participant should be transferred if the CPM Client's Clearing Participant Defaults. Such notification is taken to be a request to transfer those Open Positions to the Alternate Clearing Participant if such a Default occurs (in accordance with, and subject to, these Rules and the Procedures). A CPM Client may vary its nomination by further notice to ASX Clear (Futures).

A Clearing Participant is not able to be an Alternate Clearing Participant (irrespective of any previous nomination) in respect of a CPM Client at any time if:

- (a) in respect of an Individual Sub-Account of that CPM Client for which there is a Nominated Person, ASX Clear (Futures) does not at that time:
    - (i) maintain an Individual Sub-Account for a CPM Client in respect of that Nominated Person in that Clearing Participant's Client Clearing Account; or
    - (ii) maintain a Client Sub-Account for that Nominated Person as a CPM Client in that Clearing Participant's Client Clearing Account; or
  - (b) provided that (a) does not apply, ASX Clear (Futures) does not at that time maintain a Client Sub-Account for that CPM Client in that Clearing Participant's Client Clearing Account; or
  - (c) it is not authorised to clear all of the Open Positions recorded in an Individual Sub-Account for that CPM Client at that time.
- 119.2 If a CPM Client of a Clearing Participant has not nominated an Alternate Clearing Participant before the CPM Client's Clearing Participant Defaults then, following the Default of the Clearing Participant and in accordance with the Procedures, ASX Clear (Futures) will request that the CPM Client either:

- (a) notifies ASX Clear (Futures) of the details of an Alternate Clearing Participant to which the CPM Client wants all the Open Positions recorded in an Individual Sub-Account for that CPM Client held by the Defaulted Clearing Participant transferred; or
- (b) confirms that its Open Positions recorded in an Individual Sub-Account for that CPM Client held by the Defaulted Clearing Participant are to be terminated.

If the CPM Client wants to transfer such Open Positions but has not been able to nominate an Alternate Clearing Participant then ASX Clear (Futures) may, in its sole discretion, attempt to assist the CPM Client to establish clearing arrangements with another Clearing Participant.

- 119.3 If a Clearing Participant of a CPM Client Defaults and the CPM Client has nominated one or more Alternate Clearing Participants (either before or after the Default occurred) then ASX Clear (Futures) will, in accordance with the relevant CPM Client's instructions given in accordance with the Procedures, provide the details of the Open Positions recorded in an Individual Sub-Account for that CPM Client held by that Clearing Participant to each of the CPM Client's Alternate Clearing Participants and request that each Alternate Clearing Participant confirms whether it is prepared to accept those Open Positions. Upon receipt of the request from ASX Clear (Futures), each Alternate Clearing Participant will as soon as reasonably practicable inform ASX Clear (Futures) whether or not it is prepared to accept such Open Positions of the CPM Client. If more than one Alternate Clearing Participant of a CPM Client has confirmed that it is prepared to accept those Open Positions then ASX Clear (Futures) will contact the CPM Client to confirm to which Alternate Clearing Participant the relevant Open Positions are to be transferred.
- 119.4 If ASX Clear (Futures) has been informed of a single Alternate Clearing Participant nominated by the CPM Client which has confirmed that it is prepared to accept the transfer of all of the Open Positions recorded in an Individual Sub-Account for that CPM Client held by the Defaulted Clearing Participant by the time specified in the Procedures or notified to the CPM Client by ASX Clear (Futures) after the relevant Default then all of those Open Positions recorded in such Individual Sub-Account for that CPM Client are to be transferred to the Alternate Clearing Participant. The transfer of the Open Positions in an Individual Sub-Account is to be conducted in accordance with these Rules and the Procedures, provided that:
- (a) the consent of the Defaulted Clearing Participant is not required;
  - (b) the consent of the CPM Client and the Alternate Clearing Participant are taken to have already been provided; and
  - (c) the Collateral Value calculated in respect of the Individual Sub-Account for that CPM Client with the Defaulted Clearing Participant is to be transferred from the Client Clearing Account of the Defaulted Clearing Participant to the Client Clearing Account of the Alternate Clearing Participant and the records of the relevant Client Sub-Account of the CPM Client with the Defaulted Clearing Participant and the relevant Client Sub-Account of the Alternate Clearing Participant are to be adjusted accordingly.

Amended 31/08/15

#### **Explanatory Note**

The meaning of Collateral Value for the purpose of paragraph (c) is affected by Rule 121.

Any transfer of Open Positions to an Alternate Clearing Participant will be effected by ASX Clear (Futures) in accordance with this Rule 119, Rule 33.5, OTC Rule 4.13 and the Procedures and the OTC Handbook, as applicable.

119.5 If either:

- (a) prior to any transfer taking place in accordance with Rule 119.4 the CPM Client has notified ASX Clear (Futures) that Open Positions recorded in an Individual Sub-Account for that CPM Client held by the Defaulted Clearing Participant on behalf of the CPM Client are not to be transferred to any Alternate Clearing Participant but are to be terminated; or
- (b) ASX Clear (Futures) has not been informed of a single Alternate Clearing Participant nominated by the CPM Client which has confirmed that it is prepared to accept the transfer of all of the Open Positions recorded in an Individual Sub-Account for that CPM Client held by the Defaulted Clearing Participant on behalf of the CPM Client by the time specified in the Procedures or notified to the CPM Client by ASX Clear (Futures) after the relevant Default,

then the obligations under those Open Positions recorded in such Individual Sub-Account for that CPM Client held by the Defaulted Clearing Participant on behalf of the CPM Client are to be terminated in accordance with these Rules.

119.6 After ASX Clear (Futures) has determined the total amount payable in connection with the Default of a Clearing Participant in accordance with these Rules then it must determine the allocation of its losses, costs and expenses (including in connection with Variation Margin not received with respect to Open Positions and amounts payable in connection with the Default Management Process, such as DM Hedging Transaction Costs and amounts payable in respect of DM Auctions) in respect of each Individual Sub-Account of the Defaulted Clearing Participant which held Open Positions which have been terminated. The CPM Client is entitled to the payment of the Collateral Value calculated in respect of that Individual Sub-Account less the amount of the allocated losses, costs and expenses.

Amended 31/08/15

#### **Explanatory Note**

The meaning of Collateral Value for the purpose of Rule 119.6 is affected by Rule 121.

119.7 If a Nominated Person in respect of an Individual Sub-Account of a CPM Client has been notified to ASX Clear (Futures) before the CPM Client's Clearing Participant Defaults then:

- (a) any communication under this Rule 119 after the Default of the CPM Client's Clearing Participant in relation to that Individual Sub-Account will be conducted between the Nominated Person (and not the CPM Client) and ASX Clear (Futures) only; and
- (b) the payment of the Collateral Value calculated in respect of that Individual Sub-Account less the amount of the allocated losses, costs and expenses, as determined by ASX Clear (Futures) under Rule 119.6, will be paid to the Nominated Person and not the CPM Client, the payment of which discharges ASX Clear (Futures)' obligation to make this payment to the CPM Client.

Amended 31/08/15

## **120 Clearing Participant Default (Application to Omnibus Sub-Accounts)**

120.1 All of the CPM Clients on behalf of whom a Defaulted Clearing Participant holds Open Positions in an Omnibus Sub-Account may, at any time following the Default of that Clearing Participant and at ASX Clear (Futures) discretion, nominate the same Clearing Participant to which Open Positions recorded in such Omnibus Sub-Account should be transferred following the Clearing Participant's Default. Any

transfer of Open Positions recorded in an Omnibus Sub-Account to such a nominated Clearing Participant is to be effected at ASX Clear (Futures)' discretion.

- 120.2 ASX Clear (Futures) may, in its sole discretion, and with the agreement of the relevant CPM Clients, transfer Open Positions recorded in an Omnibus Sub-Account of a Defaulted Clearing Participant without also transferring any Collateral Value in respect of the Omnibus Sub-Account or other value related to Margin calculated in respect of those Open Positions. Unless otherwise directed by ASX Clear (Futures), the transferred Open Positions are to be margined in accordance with the Rules and the Procedures.

Amended 31/08/15

- 120.3 After ASX Clear (Futures) has determined the total amount payable in connection with the Default of a Clearing Participant in accordance with these Rules then it must determine the allocation of its losses, costs and expenses (including in connection with Variation Margin not received with respect to Open Positions and amounts payable in connection with the Default Management Process, such as DM Hedging Transaction Costs and amounts payable in respect of DM Auctions) in respect of each Omnibus Sub-Account of the Defaulted Clearing Participant which held Open Positions which have been terminated. The Defaulted Clearing Participant is entitled to the payment of the Collateral Value calculated in respect of such Omnibus Sub-Account less the amount of the allocated losses, costs and expenses.

Amended 31/08/15

#### **Explanatory Note**

The meaning of Collateral Value for the purpose of Rule 120.3 is affected by Rule 121.

### **121 Clearing Participant Default (Termination of Open Positions and Collateral Value)**

- 121.1 Any termination of the Open Positions recorded in a Client Sub-Account is to be conducted in accordance with these Rules and the Procedures including, where applicable, by Close Out of those Open Positions under the Rules or by termination of the obligations under those Open Positions under the OTC Rules or by the exercise by ASX Clear (Futures) of other rights and powers available to ASX Clear (Futures) under these Rules or Procedures which result in the Open Positions ceasing to exist.
- 121.2 For the purpose of the actions taken by ASX Clear (Futures) following the Default of a Clearing Participant (including, without limitation, the Default Management Procedures in the OTC Rules) the terminated Open Positions which were held by the Defaulted Clearing Participant on behalf of CPM Clients are able to be combined with the other terminated Open Positions of the Clearing Participant (including the terminated Open Positions which were held for other CPM Clients and any terminated House Positions).
- 121.3 For the purpose of determining the Collateral Value to be transferred or paid by ASX Clear (Futures) in respect of a Client Sub-Account in accordance with Rule 119 or 120:
- (a) the value described in Rule 116.3(a) is to be calculated as at the last end-of-day time at which the Initial Margin obligations of the Clearing Participant with respect to its Client Clearing Account were satisfied; and
  - (b) the value described in Rule 116.3(b) is to be calculated as at the time at which the Clearing Participant Defaults.

Amended 31/08/15

- 121.4 If cash or non-cash assets are attributed by ASX Clear (Futures) to an Individual Sub-Account in accordance with Rule 116.2A at the time of a Clearing Participant's Default, ASX Clear (Futures) will transfer equivalent cash or non-cash assets (as applicable) in accordance with instructions notified to ASX Clear (Futures) in respect of the Individual Sub-Account. ASX Clear (Futures)' obligation to transfer or pay the Collateral Value in respect of that Individual Sub-Account in accordance with Rule 119 is discharged by transferring such equivalent cash or non-cash assets to the extent of the value of the cash or non-cash assets transferred as determined by ASX Clear (Futures) as at the time referred to in the applicable paragraph under Rule 121.3. However, ASX Clear (Futures) is not required to transfer any non-cash assets in the circumstances specified in the Procedures.

Introduced 31/08/15

- 121.5 Without limiting the other provisions of these Rules, any excess of Collateral Value calculated in respect of a Defaulted Clearing Participant's Client Sub-Accounts over net proceeds which have been received by ASX Clear (Futures) from the application or realisation of, or enforcement against, the money, collateral, securities or other property of the Defaulted Clearing Participant held in respect of its Client Clearing Account is to be treated as, and included in the calculation of, Loss incurred by ASX Clear (Futures) in connection with the Clearing Participant's Default.

Amended 31/08/15

**End of Section. Next page is no. 1101.**