

SUSPENSION AND TERMINATION OF PARTICIPANTS

The purpose of this Guidance Note	<ul style="list-style-type: none"> To provide guidance to participants on how ASX approaches the suspension or termination of a participant's admission to the ASX Clear clearing and settlement facility
The main points it covers	<ul style="list-style-type: none"> The circumstances which may lead to a suspension or termination The obligation of a participant to notify ASX of those circumstances The action ASX may take on becoming aware of those circumstances Notification of ASX's decision to impose a suspension or termination The effect of a suspension or termination Appealing a suspension or termination
Related materials you should read	<ul style="list-style-type: none"> ASX Clear Operating Rules Guidance Note 2 <i>Resigning a Participation</i>

History: Guidance Note 5 amended 03/12/21. Previous versions of this Guidance Note were issued in 03/14, 05/15, 10/15 and 03/17.

Important notice: ASX has published this Guidance Note to assist participants to understand and comply with their obligations under the ASX Clear Operating Rules. It sets out ASX's interpretation of the ASX Clear Operating Rules and how ASX is likely to enforce those rules. Nothing in this Guidance Note necessarily binds ASX in the application of the ASX Clear Operating Rules in a particular case. In issuing this Guidance Note, ASX is not providing legal advice and participants should obtain their own advice from a qualified professional person in respect of their obligations. ASX may withdraw or replace this Guidance Note at any time without further notice to any person.

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1. Introduction

This Guidance Note is published to provide guidance to participants on how ASX Clear Pty Limited (ASX) approaches the suspension or termination of a participant's admission to the ASX Clear clearing and settlement facility.

2. The circumstances which may lead to a suspension or termination

ASX may suspend or terminate the authority of a participant to clear all or any category of market transactions if ASX considers that the participant has committed an "event of default".¹ These events include:

- ASX restricting the participant from accessing the clearing system;
- the participant failing to pay any amount due and payable to ASX under the rules;
- the participant failing to perform any of its obligations to ASX under the rules;
- the participant failing to comply with any reasonable direction, decision or requirement of ASX under the rules;
- the participant failing to comply with any determination resulting from enforcement action taken by ASX against the participant;²
- any failure by the participant which is a seller in respect of a deliverable derivatives CCP contract to perform its settlement obligations on settlement of that contract or to take all steps required to put itself in the position to comply with its settlement obligations;
- the participant indicating that it will or may suspend payment to ASX or to creditors;
- the participant being or stating that it is, or reasonably suspects that it may become, insolvent, or ceasing or indicating that it will or may cease to carry on business;
- the participant becoming, or the participant or any other person taking any step which might result in the participant becoming, or the participant reasonably suspecting that it may become a 'Chapter 5 body corporate';³
- someone taking control of the participant's property for the benefit of the participant's creditors because the participant is, or is likely to become, insolvent;

¹ ASX Clear Operating Rule 15.2.1(I).

² This includes enforcement action under ASX Clear Operating Rule 19.3.1 and the ASX Enforcement and Appeals Rulebook or under the Old Australian Securities Exchange Enforcement and Appeals Rulebook (as defined in ASX Clear Operating Rule 19.20).

³ As defined in section 9 of the Corporations Act.

- if the participant is a partnership, any partner becoming an insolvent under administration, or any other person taking any step which might result in any partner becoming an insolvent under administration;
- any distress, execution or other process is levied or enforced or served upon or against any property of the participant;
- an investigator, inspector or other officer being appointed, or an investigation being directed or commenced under the Corporations Act or other legislation to investigate all or part of the affairs of the participant or a related entity, in circumstances which are, in the opinion of ASX, material to the capacity of the participant to meet its obligations to ASX;
- the participant not having the level of capital required under the rules;
- the participant no longer satisfying the admission requirements or failing to comply with any condition of admission;⁴
- the participant making a wilful omission or misstatement in respect of a material matter prior to, or in connection with, its application for admission;
- the participant or any of its employees is the subject of any regulatory or disciplinary action by any body;
- the participant failing to comply with rule 19.1 (monitoring compliance);
- the participant, or a related body corporate of the participant being suspended, expelled or terminated as a member or participant of, or subjected to any sanction imposed by, or declared in default or non-compliance under the rules of, ASX, an approved market operator, an approved settlement facility, any Australian or overseas derivatives, securities, commodity or stock exchange or market or any other clearing and settlement facility or is subjected to any sanction imposed by an Australian or overseas regulatory authority or the participant ceasing to be entitled to carry on business; and
- upon request by ASX, which may be made at any time, the participant fails to confirm on or before the cut-off time reasonably specified by ASX in its request that it is able to pay its debts as they become due and payable.⁵

ASX may immediately after giving written notice to the participant of its intention to do so, also suspend or terminate the authority of a participant to clear all or any category of market transactions if an event or series of events (whether related or not) occurs in relation to the participant or a related entity, which is not an event of default but which ASX considers has or may have a material adverse effect on:

- the capacity of the participant to meet all its obligations to ASX, an approved market operator, an approved settlement facility or other participants;
- the financial position of ASX or the participant; or
- the market conducted by an approved market operator or an underlying market.⁶

Such events include (without limitation):

- the participant failing to comply, indicating that it will or may fail to comply, or ASX suspecting that the participant will or may fail to comply, with any of the ASX Clear Operating Rules or Procedures or the terms of any agreement with ASX;

⁴ This could arise, for example, where a participant has outsourced any of its activities as a participant to another participant and that other participant's participation in the ASX clearing facility has been suspended or terminated, resulting in the first-mentioned participant no longer being able to comply with its obligations under the ASX Clear Operating Rules.

⁵ ASX Clear Operating Rule 15.1.1. Conversely, a participant's suspension or termination of admission from the ASX Clear facility may result in its suspension or termination as a participant in other markets and clearing and settlement facilities.

⁶ ASX Clear Operating Rule 15.3.1.

- ASX having reasonable grounds for suspecting that the participant will or may fail to comply with any of the ASX Clear Operating Rules or Procedures or the terms of any agreement with ASX;
- ASX being satisfied that the acts, omissions or proposed conduct of the participant may adversely affect the operation or integrity of the ASX Clear facility;
- the participant or a related entity failing to comply, or indicating that it will or may fail to comply with any rule or the procedure of, or any term of any agreement with, an approved market operator or any other market operator or clearing and settlement facility;
- ASX is informed by an approved market operator or any other market operator or clearing and settlement facility that the participant or a related entity is not, or may not be, complying with its obligations under the rules or procedures of, or any terms of any agreement with, an approved market operator or any other market operator or clearing and settlement facility;
- the participant or a related entity failing to comply, or indicating that it will or may fail to comply with any legislative or regulatory requirement;
- the participant failing to deliver financial products to discharge its clearing obligation; or
- ASX is informed by any other regulatory body that the participant or a related entity is not, or may not be, complying with any legislative or regulatory requirement.⁷

Where an event of default or other event referred to above has occurred, ASX may impose restrictions as new conditions on a participant's authority to clear a category of market transaction.⁸ These restrictions may be instead of, or in addition to, a suspension.

ASX may also take a wide variety of other specific actions in response to an event of default or other event referred to above.⁹ This includes taking any action, taking no action, or directing the participant to take any action or no action, in order to eliminate or minimise the risk with respect to cash CCP transactions or derivatives CCP contracts of the participant which ASX considers appropriate.¹⁰ Again, these actions or directions may be instead of, or in addition to, a suspension.

Action by ASX under ASX Clear Operating Rule 15 (default) does not prevent ASX from taking enforcement action for what ASX considers to be a contravention of the ASX Clear Operating Rules or Procedures.¹¹

3. The obligation of a participant to notify ASX of those circumstances

A participant must immediately notify ASX of certain matters that could give rise to a suspension or termination of its admission. These include:

- it becoming aware of having committed a significant breach of the ASX Clear Operating Rules or Procedures;
- any circumstance exists which constitutes an event of default or other event referred to under heading 2 above;
- it or any of its employees being the subject of any regulatory or disciplinary or enforcement action by any market operator, another clearing and settlement facility, ASIC or any other regulatory authority in connection with its activities as a participant;

⁷ ASX Clear Operating Rules 15.3.1(a)-(h).

⁸ ASX Clear Operating Rule 15.2.1(l).

⁹ See ASX Clear Operating Rules 15.2.1(a)-(k) and (m)-(s).

¹⁰ ASX Clear Operating Rule 15.2.1(p). In deciding whether taking action or giving a direction under this rule is "appropriate", among other things, ASX has regard to the obligations, duties, powers and discretions which it has as the holder of an Australian CS facility licence under Part 7.3 of the Corporations Act: see ASX Clear Operating Rule 1.15.

¹¹ ASX Clear Operating Rule 19.4.1.

- it suspecting or becoming aware that any employee has engaged in fraudulent conduct or other conduct which might constitute unprofessional conduct; or
- it becoming aware or having reasonable grounds for suspecting the existence of any other event or circumstance which adversely affects, or may adversely affect, its financial position or solvency or its ability to comply with the ASX Clear Operating Rules or Procedures.¹²

4. The action ASX may take on becoming aware of those circumstances

Where ASX becomes aware of circumstances which may entitle it to suspend or terminate the admission of a participant, it will liaise closely with the participant to understand the circumstances and the potential ramifications for the participant, ASX and the clearing and settlement system more generally.¹³

ASX expects to have open, frank and frequent communications with the senior management of the participant and, if an external administrator (such as a receiver, administrator or liquidator) has been appointed, with the external administrator, while those circumstances continue. This includes ASX being kept apprised of material developments as they arise.

If it considers it appropriate, ASX will schedule meetings or conference calls with the participant before market open, after market close and after completion of the settlement cycle on each trading day so that it can be apprised of, and take appropriate action in response to, events overnight or during that day. It may also require the participant to provide regular reports to ASX.

Depending on the circumstances ASX may establish a Participant Issue Response Group or Default Management Committee with personnel from its risk, compliance and operations teams and other relevant areas to co-ordinate ASX's response and to provide input into any decision on whether to suspend or terminate the admission of, or take other action in relation to, the participant.

ASX may decide to impose restrictions on the participant's rights or privileges as a participant,¹⁴ or give a direction to the participant to take any action or no action on certain matters,¹⁵ pending a decision on whether to suspend or terminate its admission. ASX may also impose conditions on the admission or clearing permissions of the participant.¹⁶

Some of the more common restrictions or conditions applied by ASX in these circumstances include:

- that the participant not provide, or enter into any agreement to provide, clearing services to a new client;
- if the participant clears for itself, that the participant:
 - not enter into any new market transactions on house account or for any or certain specified clients;
 - not enter into particular types of market transactions on house account or for any or certain specified clients;
 - only enters into new market transactions on house account or for any or certain specified clients as necessary to close out existing positions; or
 - only enters into particular types of market transactions on house account or for any or certain specified clients as necessary to close out existing positions;
- if the participant clears for other participants, that the participant:

¹² ASX Clear Operating Rule 19.1A.1.

¹³ This applies whether the participant notified ASX of those circumstances or ASX became aware of those circumstances from another source.

¹⁴ See note 8 above and the accompanying text.

¹⁵ See note 10 above and the accompanying text.

¹⁶ ASX Clear Operating Rule 15.2.1(I).

- not accept any new clearing obligations for some or all of those other participants;
- not accept any new clearing obligations for some or all of those other participants in relation to particular types of market transactions;
- only accepts new clearing obligations for some or all of those other participants as necessary to close out existing positions; or
- only accepts new clearing obligations for some or all of those other participants in relation to particular types of market transaction as necessary to close out existing positions;
- that the participant's initial, variation or total margin obligations must not exceed a nominated limit;
- that the participant restricts its business activities (including its non-ASX activities) in some other specified manner;
- that the participant provide to ASX information or reports on specified matters and at specified times; and
- that the participant provide a solvency certificate on a specified basis to ASX signed by all or a given number of its directors.

5. Notification of ASX's decision to impose a suspension or termination

If ASX decides that the admission of a participant should be suspended or terminated, it will notify the participant in writing of that decision.¹⁷ It will also usually publish a market notice naming the participant and detailing the action it has taken.

ASX will notify each relevant approved market operator and approved settlement facility for which the participant clears of the suspension or termination of the participant as soon as practicable after ASX's decision.¹⁸ Depending on circumstances, ASX may also notify ASIC and the Reserve Bank of Australia of the suspension or termination.

6. The effect of a suspension

The period of suspension will be the period that ASX considers necessary or desirable and ASX may extend the period of suspension if it considers an extension is necessary or desirable.¹⁹ During a suspension, the participant cannot clear any relevant transactions on ASX and must not hold itself out as an ASX participant.²⁰

ASX may terminate the admission of a suspended participant at any time during its suspension.²¹

ASX will typically liaise with the participant about the requirements that must be satisfied for its suspension to be lifted. ASX may require proof that those requirements have been satisfied before it will lift the suspension and will require the participant and any external administrator of the participant to keep ASX apprised of material developments affecting the participant or its ability to resume its clearing activities, as they arise.

7. The effect of a termination

The termination of a participant's admission does not affect any accrued rights which ASX, its related bodies corporate or other participants have against the participant or any accrued obligations which the participant has to ASX, its related bodies corporate or other participants.²²

¹⁷ ASX Clear Operating Rule 19.4.2(b). Initial communication of ASX's decision will frequently be made by telephone and then followed up with a formal written notice.

¹⁸ ASX Clear Operating Rule 15.5.2.

¹⁹ ASX Clear Operating Rule 19.5.1(a).

²⁰ ASX Clear Operating Rule 19.5.1(b).

²¹ ASX Clear Operating Rule 19.5.1(c).

²² ASX Clear Operating Rule 3.13.1.

Notwithstanding the termination:

- the ASX Clear Operating Rules continue to apply and ASX continues to have jurisdiction in respect of the participant concerning any conduct or any failure to comply with the rules which occurred before the termination, whether that conduct or failure was by the participant or by any other person for whose conduct the participant was responsible; and
- the participant continues to be bound by any indemnity given by it under the rules.²³

8. Appealing a suspension or termination

A participant who is dissatisfied with a decision by ASX to suspend or terminate its admission is entitled to appeal that decision.²⁴

The participant must pay an appeal fee of \$5,000 (exclusive of GST) to, and lodge written notice of the appeal with, the ASX Appeals Tribunal within 10 business days after written reasons for the decision are sent to the participant.²⁵

Further information about the appeal process can be found in Guidance Note 1 to the ASX Enforcement and Appeals Rulebook.

²³ ASX Clear Operating Rule 3.13.2.

²⁴ ASX Clear Operating Rule 19.7.2.

²⁵ Rule 3.1.3(da) of the ASX Enforcement and Appeals Rulebook and the accompanying Procedure.