



## **ASX RECOVERY RULES**

### **SECTION 6 ALLOCATION OF INVESTMENT LOSSES**

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## SECTION 6 ALLOCATION OF INVESTMENT LOSSES

### 6.1 ASX Investments and ASX Clearing Corporation

Investments of funds received by ASX Clear and ASX Clear (Futures) are made by ASX Clearing Corporation Limited (referred to as **ASX Clearing Corporation**). These investments are referred to in this Rule 6 as **ASX Investments**.

### 6.2 Investment Default, Investment Default Declaration and Investment Loss

Either of the following is an **Investment Default**:

- (a) the insolvency or default of the issuer of an ASX Investment, or the counterparty to ASX Clearing Corporation in respect of the ASX Investment. In the case of an ASX Investment which is a deposit, this includes the deposit-taking institution; or
- (b) a loss which has been recognised with respect to, or other recognised diminution in value of, an ASX Investment (including such loss or diminution which arises in connection with a restructuring or similar event which occurs in respect of the ASX Investment),

except to the extent that is a direct result of:

- (i) the fraud of ASX Clear, ASX Clear (Futures) or ASX Clearing Corporation; or
- (ii) a material non-compliance by the ASX CCP with its investment policy. For the avoidance of doubt, a material non-compliance by the ASX CCP with its investment policy does not preclude the occurrence of an Investment Default.

If an Investment Default occurs, then ASX Clearing Corporation may declare that an Investment Default has occurred (referred to as an **Investment Default Declaration**) and determine, in its reasonable discretion, that a loss has been caused by or arises out of that Investment Default.

If ASX Clearing Corporation determines that the aggregate amount of losses following one or more related Investment Defaults (as determined by ASX Clearing Corporation in its reasonable discretion) is in excess of A\$75 million (referred to as the **Investment Loss Threshold**) then the amount of that excess (as determined by ASX Clearing Corporation) is the **Investment Loss** in respect of those Investment Defaults. For the purpose of determining the amount of an Investment Loss, if the ASX CCP has materially exceeded investment limits that it has approved in accordance with its investment policy then ASX Clearing Corporation must disregard losses to the extent that they exceed those approved investment limits.

Each ASX CCP will review the Investment Loss Threshold on at least an annual basis and, will consult with the Risk Committee in relation to any proposed changes in accordance with the ASX CCP Rules.

Amended 01/11/22

### 6.3 Allocation of Investment Loss to Participants

Each Investment Loss is to be allocated to each Participant in the following way:

- (a) ASX Clearing Corporation is to allocate an amount of the Investment Loss to the ASX CCP. This is to be determined on the basis of ASX Clearing Corporation's calculation of the interest which the ASX CCP holds in the

total amount of ASX Investments. The amount so allocated to the ASX CCP is the **ASX CCP Investment Loss**; and

- (b) the ASX CCP is to allocate the ASX CCP Investment Loss which has been allocated to it to each Participant as at the time of the Investment Default Declaration. This allocation is to be determined on the basis of the ASX CCP's calculation of the amount representing funds which the Participant has paid to the ASX CCP in accordance with the Rules (including Participant Commitment, margin and excess cash) and which has been invested in ASX Investments as at the time of the Investment Default Declaration. The amount so allocated to a Participant in this manner is the **Participant Investment Loss**,

provided that any Investment Loss incurred on an ASX Investment of Overnight Margin Monies, is to be allocated to each Participant that is not in Default at the time of the allocation in the following way:

- (c) ASX Clearing Corporation is to allocate the Investment Loss to ASX Clear (Futures). The amount so allocated to ASX Clear (Futures) is the **ASXCLF OM Investment Loss**; and
- (d) ASX Clear (Futures) is to allocate the ASXCLF OM Investment Loss to each Participant that is not in Default at the time of the allocation as follows:
  - (i) 40 per cent of the ASXCLF OM Investment Loss is to be allocated in proportion to the Participant's Adjusted Commitment;
  - (ii) 30 per cent of the ASXCLF OM Investment Loss is to be allocated only to those Participants that ASX Clear (Futures) has notified prior to the Investment Default are in scope to pay Overnight Margin Monies to ASX Clear (Futures) in proportion to the Participant's Adjusted Commitment; and
  - (iii) 30 per cent of the ASXCLF OM Investment Loss is to be allocated based on the Participant's percentage share of the total Overnight Margin Monies held by all US Settlement Banks at the time the Investment Default occurred.

The amount so allocated to a Participant in this manner is the **Participant OM Investment Loss**.

The determination of these amounts is final and binding on the Participant, absent manifest error.

For the purpose of this Rule 6:

- (a) "Adjusted Commitment" means for a Futures Participant, that Participant's Futures Commitment as last notified to the Participant by ASX Clear (Futures) and for an OTC Participant that Participant's OTC Commitment as last notified to the Participant by ASX Clear (Futures) adjusted by reference to the OTC/Futures margin ratio for the Calculation Period used to size the Futures Commitment.
- (b) "Calculation Period" has the same meaning as the term when it is used in Schedule 10 of the ASX Clear (Futures) Rules.
- (c) "Overnight Margin Monies" means cash margin paid in United States Dollars to ASX Clear (Futures) in accordance with its overnight margining process and deposited with a US Settlement Bank.
- (d) "US Settlement Bank" means a bank established in the United States that holds Overnight Margin Monies.

Amended 01/11/22, 26/02/24

## 6.4 Allocation of Participant loss between Accounts

The ASX CCP is to allocate the Participant Investment Loss for a Participant amongst the amounts representing funds which that Participant has paid to the ASX CCP in accordance with the Rules (including Participant Commitment, margin and excess cash) and which has been invested in ASX Investments as at the time of the Investment Default Declaration on a pro-rata basis across its relevant Accounts (including any Client Accounts). ASX Clear (Futures) is to allocate the Participant OM Investment Loss for a Participant across the Participant's Accounts (including any Client Accounts) on a pro rata basis, provided that such loss is allocated first to the Overnight Margin Monies (if any) paid by the Participant to ASX Clear (Futures) in respect of those Accounts and then to the amounts representing all other funds which the Participant has paid to ASX Clear (Futures) (including Participant Commitment, margin other than Overnight Margin Monies and excess cash) in accordance with the Rules and which has been invested in ASX Investments as at the time of the Investment Default Declaration. For these purposes ASX Clear (Futures) will use the exchange rate of the foreign currency transaction it has entered into (or the average rate of such transactions if there are more than one) in connection with the allocation of the Participant OM Investment Loss.

Each such amount is immediately reduced by the amount so allocated to it provided that no amount can be reduced to less than zero. If the amount of a Participant's Participant OM Investment Loss is greater than the funds (including Overnight Margin Monies) the Participant has paid to ASX Clear (Futures) and which have been invested in ASX Investments as at the time of the Investment Default Declaration, then the residual portion of the Participant's Participant OM Investment Loss will be reallocated among the other Participants of ASX Clear (Futures) with available funds in accordance with Rule 6.3.

With respect to a Participant Investment Loss or a Participant OM Investment Loss, the Participant is to reinstate the amount of such a reduction (other than a reduction in Overnight Margin Monies) on or before the next Business Day in the manner specified in the Recovery Handbook.

The ASX CCP will notify each Participant of its Participant Investment Loss or Participant OM Investment Loss and the allocation of such Participant Investment Loss or Participant OM Investment Loss across each of its relevant Accounts. However, a failure to provide such a notification does not affect the allocation of the Participant Investment Loss or Participant OM Investment Loss for a Participant in accordance with this Rule 6.4.

A Participant of ASX Clear (Futures) must provide each Client with, or direct each Client to, a copy of the Investment Loss Fact Sheet, in accordance with the Procedures.

Amended 01/11/22

### 6.4A Use of a defaulting Participant's Remaining DM Assets to reimburse a Participant OM Investment Loss

Notwithstanding Rule 6.3(d), if a Participant in default has Defaulted Participant Assets remaining after ASX Clear (Futures) has applied those assets to satisfy the ASX CCP Loss (or a related body corporate of ASX Clear (Futures) has applied those assets to satisfy losses incurred in connection with the Participant's default) and closed out or ported all of the Participant's positions (**Remaining DM Assets**) then ASX Clear (Futures) will:

- (a) calculate the Participant OM Investment Loss that would have applied to the Participant under Rule 6.3(d); and
- (b) apply the Participant's Remaining DM Assets to reimburse the Participants which suffered a reduction in the amount representing funds which the Participants have paid to ASX Clear (Futures) in accordance with the Rules in aggregate up to an amount capped at the defaulting Participant's OM Investment Loss. This is to be reimbursed (by the means which ASX Clear (Futures) decides is appropriate) pro rata to those Participants up to the amount of the relevant reduction.

However, ASX Clear (Futures) is not required to account to any Participant for any amount which is necessary to discharge any other overdue debt obligation of the Participant to ASX Clear (Futures) at that time.

Introduced 01/11/22

## 6.5 Reimbursement of Recovered Amounts

If the ASX CCP exercises its powers under this Rule 6 in respect of an Investment Default and the ASX CCP subsequently recovers an amount in respect of any ASX Investment which was the subject of the Investment Default, then the amount recovered, less any costs and expenses incurred by either the ASX CCP or ASX Clearing Corporation in connection with the recovery, is the **Recovered Amount** for that Investment Default.

The ASX CCP must use the Recovered Amount in respect of an Investment Default to reimburse the Participants which suffered a reduction in the amount representing funds which the Participants have paid to the ASX CCP in accordance with the Rules (including Participant Commitment, margin including Overnight Margin Monies or excess cash) because of their Participant Investment Loss or Participant OM Investment Loss with respect to that Investment Default. This is to be reimbursed (by the means which the ASX CCP decides is appropriate) pro rata to those Participants up to the amount of the relevant reduction. Participants will be reimbursed up to the amount of the relevant reductions prior to the ASX CCP being reimbursed for any losses incurred in connection with the relevant Investment Defaults (excluding any costs and expenses incurred by the ASX CCP in connection with the applicable Investment Defaults).

However, the ASX CCP is not required to account to any Participant for any amount which is necessary to discharge any other overdue debt obligation of the Participant to the ASX CCP at that time.

*Explanatory Note: Reimbursement of a Participant under Rule 6.5 will take into account any reimbursement made to the same Participant under Rule 6.4A.*

Amended 01/11/22

**End of Section. Next page is no. 701.**