

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 Settlement clearing and settlement facility and the impacts on settlement
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 The operation of the "back-out algorithm" Impact on other participants Appealing a suspension or termination
Related materials you should read	<ul style="list-style-type: none"> ASX Settlement 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, 06/15 and 03/17.

Important notice: ASX has published this Guidance Note to assist participants to understand and comply with their obligations under the ASX Settlement Operating Rules. It sets out ASX's interpretation of the ASX Settlement 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 Settlement 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 Settlement Pty Limited (ASX) approaches the suspension or termination of a participant's admission to the ASX Settlement clearing and settlement facility.

This Guidance Note does not address the suspension or termination of a participant's admission to the ASX Settlement clearing and settlement facility as a specialist settlement participant. Guidance on the suspension or termination of a specialist settlement participant can be found in ASX Settlement Operating Rules Guidance Note 14 *Specialist Settlement Participants*.

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

ASX may suspend or terminate the admission of a participant if ASX considers that the participant has committed an "event of non-compliance".¹ These events include:

- the participant ceasing to comply with any participation requirement that has not been waived by ASX;²
- the participant reasonably suspecting that its payments provider will or may not authorise a net payment obligation on its behalf;
- the participant or any of its employees being the subject of any regulatory, disciplinary or enforcement action by a market licensee, another clearing and settlement facility, ASIC or any other regulatory authority that relates in any way to its activities as a participant;³
- the participant taking, or becoming aware that another person has taken, a step that may in any way affect the ability or entitlement of ASX to obtain payment under the performance bond lodged by the participant;
- if the participant is a body:
 - it becoming, or reasonably suspecting that it may become, a Chapter 5 body corporate;⁴
 - it taking, or becoming aware that another person has taken, a step that is intended to lead to it becoming externally administered;

¹ ASX Settlement Operating Rules 12.19.1(a), (k) and (l).

² 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 settlement facility has been suspended or terminated, resulting in the first-mentioned participant no longer being able to comply with its obligations under the ASX Settlement Operating Rules.

³ Conversely, a participant's suspension or termination of admission from the ASX settlement facility may result in its suspension or termination as a participant in other markets and clearing and settlement facilities.

⁴ As defined in section 9 of the Corporations Act.

- someone taking control of its property for the benefit of creditors because it is, or is likely to become, insolvent;
- if the participant is an individual or consists of two or more partners or trustees:
 - the individual or a partner or trustee becoming, or reasonably suspecting that they may become, an insolvent under administration;
 - the individual or a partner or trustee taking, or becoming aware that another person has taken, a step that is intended to lead to them becoming an insolvent under administration;
 - someone taking control of the property of that individual, partner or trustee for the benefit of creditors because they are, or are likely to become, insolvent.
- the participant's payments provider becoming, or the participant reasonably suspecting its payments provider may become, an externally administered body or an insolvent under administration;
- if the participant is a participant of an approved market operator or clearing facility, the participant:
 - ceasing to be a participant or entitled to carry on business as a participant;
 - being suspended from all or any privileges as a participant; or
 - being prohibited from transacting any business with or through any participant,of that market operator or clearing facility;
- the participant becoming aware that it has committed a significant breach of the ASX Settlement Operating Rules or Procedures;
- the participant suspecting or becoming aware that any employee has engaged in fraudulent conduct; or
- the participant becoming aware of any other event or circumstance which adversely affects, or may adversely affect, its financial position, solvency, or ability to comply with the ASX Settlement Operating Rules or Procedures.⁵

ASX may also suspend or terminate the admission of a participant if ASX is satisfied that:

- the participant's payments provider has not authorised, or there are reasonable grounds for suspecting that a payments provider will or may not authorise, a net payment obligation on behalf of the participant;
- the participant or related entity has failed to comply, or indicated that it will or may fail to comply, with any rule or procedure of, or any term of any agreement with, an approved market operator or any other market operator or clearing and settlement facility or an approved market operator or any other market operator or clearing and settlement facility has informed ASX that this has occurred;
- the participant has failed to comply with any determination resulting from enforcement action taken by ASX against the participant;⁶
- the participant has failed to comply, or indicates that it will or may fail to comply, with any legislative or regulatory requirement or a regulatory body has informed ASX that this has occurred; or
- the acts, omissions, or proposed conduct of the participant may adversely affect the operation and integrity of the ASX Settlement facility; or

⁵ ASX Settlement Operating Rule 12.18.1.

⁶ This includes enforcement action under ASX Settlement Operating Rule 12.4.1 and the ASX Enforcement and Appeals Rulebook or under the Old Australian Securities Exchange Enforcement and Appeals Rulebook (as defined in ASX Settlement Operating Rule 12.23).

- the participant has failed to comply with obligations relating to the settlement of AQUA products.⁷

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

A participant must give ASX a notice of non-compliance immediately upon the happening of an event of non-compliance referred to under heading 2 above.⁸

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.⁹

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 before or after completion of the settlement cycle on each settlement 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 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 suspend¹⁰ or terminate the admission of, or take other action in relation to, the participant.

Where an event of non-compliance or other event referred to above has occurred, ASX has the power to take a variety of steps including, but not limited to:

- imposing restrictions or conditions on the participant's rights or privileges as a participant;¹¹
- removing batch instructions from batch settlement or DvP batch settlement;¹²
- suspending the participant's access to the ASX Settlement facility for a period;¹³ and
- terminating the participant's participation.¹⁴

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

- that the participant not execute any new sponsorship agreements;
- that the participant is restricted from performing any function in the settlement facility other than for the purposes of transferring holder records to another controlling participant or effecting a conversion of a sponsored holding to issuer sponsored;

⁷ ASX Settlement Operating Rules 12.19.1(b)-(i), (k) and (l).

⁸ ASX Settlement Operating Rule 12.18.1.

⁹ This applies whether the participant notified ASX of those circumstances or ASX became aware of those circumstances from another source.

¹⁰ In determining whether it will suspend a participant, ASX will consider a range of factors, including the impact to batch settlement and other participants: see '8 The back-out algorithm' on page 6.

¹¹ ASX Settlement Operating Rules 4.2.4 and 12.19.1(j). These restrictions may be instead of, or in addition to, a suspension.

¹² ASX Settlement Operating Rule 10.5.1. See also note 21.

¹³ ASX Settlement Operating Rule 12.19.1(k).

¹⁴ ASX Settlement Operating Rule 12.19.1(l).

- that the participant is restricted from entering specific batch instructions;
- that the participant provide to ASX information or reports on specified matters and at specified times;¹⁵
- that the participant provide a solvency certificate on a specified basis to ASX signed by all or a given number of its directors; and
- that the participant provide a report from a suitably qualified independent expert approved by ASX expressing an opinion as to:
 - the performance by the participant (and any third party provider of the participant) of its obligations under the ASX Settlement Operating Rules;
 - the participant's capacity to continue to meet the requirements for admission as a participant; or
 - any other matter which in the opinion of ASX is necessary to assist ASX in the discharge of its functions under the ASX Settlement Operating Rules or as ASX otherwise considers appropriate.¹⁶

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 clearing 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 the circumstances, ASX may also notify ASIC and the Reserve Bank of Australia of the suspension or termination.

6. The effect of suspension

Where ASX suspends a participant because its payments provider has not authorised a net payment obligation or increased net payment obligation identified in a batch settlement instruction by the scheduled time, the initial period of the suspension must not exceed 10 business days.¹⁹

In all other cases, 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.²⁰

Batch instructions from the participant that are unsettled at the time of suspension will ordinarily be backed out from batch settlement.²¹

If the suspended participant is also a sponsoring participant, any sponsorship agreement the participant has with a sponsored holder is automatically terminated.²²

¹⁵ See also ASX Settlement Operating Rule 4.2.4

¹⁶ ASX Settlement Operating Rule 12.1.5.

¹⁷ ASX Settlement Operating Rule 12.19.3(c). Initial communication of ASX's decision will frequently be made by telephone and then followed up with a formal written notice.

¹⁸ ASX Settlement Operating Rule 12.19.3(d)-(f). If the participant is also a market participant of ASX Limited, ASX will also notify SEGC.

¹⁹ ASX Settlement Operating Rule 10.15.1.

²⁰ ASX Settlement Operating Rule 12.19.2.

²¹ Upon a clearing participant default, the clearing house would also ordinarily close out on-market the defaulting clearing participant's net unsettled position in each cleared financial product class, with the result that the relevant CCP batch instructions are removed from batch settlement. Any non-novated transactions will be cancelled (for the avoidance of doubt, this includes all dual entry settlement notifications – CHES 101 messages).

²² ASX Settlement Operating Rule 7.1.11.

If a participant is suspended from participation, ASX may transfer CHES holdings controlled by the suspended participant to another sponsoring participant or convert them to issuer sponsored.²³

During the period of suspension, the participant must not hold itself out as an ASX participant.²⁴

ASX may terminate the admission of a suspended participant at any time during its suspension.²⁵

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 and settlement activities, as they arise.

7. The effect of 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.²⁶

Notwithstanding the termination:

- the ASX Settlement 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.²⁷

8. The back-out algorithm

Where a participant is suspended or terminated, or its payments provider is suspended or terminated,²⁸ and the participant does not have an alternative payment provider, ASX will generally initiate the "back-out algorithm".²⁹

This is an automated process that removes the net payment obligation of the affected participant from the batch settlement process by rescheduling some or all of its purchase obligations on a priority basis³⁰ to the following settlement day and then recalculates the settlement obligations for the other participants on that basis.³¹

The objective of the back-out algorithm is to:

- eliminate the affected participant's net payment obligation, reducing it to zero or to a position of net receipt;

²³ ASX Settlement Operating Rules 12.19.10 and 12.19.11.

²⁴ ASX Settlement Operating Rule 12.19.1 final part.

²⁵ ASX Settlement Operating Rule 12.19.6.

²⁶ ASX Settlement Operating Rule 4.17.1.

²⁷ ASX Settlement Operating Rule 4.17.2.

²⁸ ASX Settlement Operating Rule 10.16.1 outlines the powers that ASX may exercise where it suspends or terminates a participant's payments provider. ASX Settlement Operating Rules 10.16A and 10.16B set out how suspended batch instructions resulting from the suspension or termination of a payments provider are settled through offsetting transaction arrangements.

²⁹ See ASX Settlement Operating Rule 10.11 in relation to the principles that apply to failing batch instructions. ASX may also initiate the back-out algorithm in circumstances other than suspension or termination of a participant (for example, to remove a financial product shortfall).

³⁰ Each payment settlement instruction is assigned a weighting which determines the priority and order in which it is rescheduled, from highest priority to lowest.

³¹ Batch instructions that are removed from settlement are rescheduled to the next settlement day and the back-out process may be repeated on subsequent days. For batch instructions removed from settlement due to a payment shortfall in respect of the defaulting participant (or due to the suspension or termination of the participant's payment provider), offsetting transaction arrangements (OTAs) are used to settle obligations under CCP Batch Instructions in respect of non-defaulting participants. Pursuant to the second leg of that OTA, equivalent batch instructions to those that were removed from settlement are scheduled for settlement on the next settlement day (ASX Settlement Operating Rules 10.11.7A, 10.16A and 10.16B, and ASX Clear Operating Rule 12.8A).

- minimise the knock-on effect to other participants;
- avoid increasing any other participants' payment obligation; and
- maximise the value and number of units settled.³²

The back-out algorithm process will result in the affected participant having a zero or small funds receipt position. While this will usually lead to a change in the funds position of other participants, they will not need to re-authorise any revised payment obligation for a CHESS participant identification number (PID) as the back-out algorithm is structured so that the net payment obligation per PID does not increase (and hence the revised net payment obligation per PID will be the same as, or less than, the amount originally authorised).³³

Whilst novated settlements may be rescheduled to the next settlement day, non-novated transactions are not. Where an event of default has occurred and a participant is suspended or terminated, ASX will generally cancel all of its non-novated transactions.

9. Appealing a suspension or termination

A participant who is dissatisfied with a decision by ASX to suspend or terminate its admission may appeal that decision in accordance with the provisions of the ASX Enforcement and Appeals Rulebook.³⁴

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.³⁵

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

³² ASX Settlement Operating Rule 10.11.6.

³³ It should be noted, however, that the operation of the back-out algorithm could lead to an increased net payment obligation at the legal entity level if a participant has multiple PIDs and an amount payable on one PID stays the same or reduces but an amount receivable from ASX on another PID is reduced or reduced by a greater amount.

³⁴ ASX Settlement Operating Rule 12.21.4. Subject to rule 12.5.2, the decision will not take effect until the expiry of the time allowed for appeal.

³⁵ Rule 3.1.2(g) of the ASX Enforcement and Appeals Rulebook and the accompanying Procedure.