

Austraclear Amendments

1.1 Definitions

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“Appeal Tribunal” means the tribunal convened in accordance with the provisions of the ASX Enforcement and Appeals Rulebook.

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1.9 ~~Australian Securities Exchange Disciplinary Processes~~ ASX Enforcement and Appeals Rulebook

The ~~Australian Securities Exchange Disciplinary Processes~~ ASX Enforcement and Appeals Rulebook form part of these Regulations where relevant for the purposes of the Corporations Act.

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2.9 Refusal of Participant Status

If an application for Participant Status does not comply with the prescribed conditions for the relevant class of Participant, the Committee may refuse the application and in that event:

- (a) the Committee must notify the Applicant in writing, giving reasons for the refusal;
- (b) the Committee must afford the Applicant a period of 10 Business Days from the date on which the Applicant receives the notice under paragraph (a) in which to provide further information to support the application;
- (c) should the Applicant provide further information in accordance with paragraph (b), the Committee must reconsider the application and give written notice to the Applicant of its decision within 20 Business Days of receiving the further information;
- (d) the Applicant has a right of appeal to the Appeal Tribunal in accordance with the provisions of the ASX Enforcement~~Australian Securities Exchange Disciplinary Processes~~ and Appeals Rulebook.

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2.10 Appeal Process

If a notice of appeal is given in accordance with the ASX Enforcement and Appeals Rulebook, then pending a decision of the Appeal Tribunal under the ~~ASX~~Australian Securities Exchange Disciplinary Processes Enforcement and Appeals Rulebook, unless the Appeal Tribunal otherwise determines:

- (a) any decision to refuse Participant Status will remain valid;
- (b) any suspension imposed will remain in force;
- (c) where applicable, any termination of Participant Status will be treated as a suspension; and
- (d) any monetary penalty~~fine~~ imposed will not be required to be paid.

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3.10 Right to Suspend or Terminate Participant Status

- (a) Subject to paragraph (b), where:
- (i) ~~Austraclear~~ receives a notice under paragraph (a), (b), (c) or (e) of Regulation 3.9 or otherwise becomes aware that a Participant or a Participating Bank has become subject to an Insolvency Event, or that there is a reasonable suspicion that a Participant or Participating Bank may become subject to an Insolvency Event;
 - (ii) ~~Austraclear determines that a Participant has failed to meet an obligation of the Participant under the Austraclear Regulations or Austraclear determines that a Participant no longer satisfies the eligibility requirements or the requirements for admission to Participant Status set out in Regulation 2.4 or Austraclear is no longer satisfied that having regard to the relevant considerations set out in Regulation 2.4 the Participant should be admitted to Participant Status;~~
 - (iii) ~~a Participant has failed to comply with a determination made by an Old Tribunal (as defined in Regulation 3.14B) pursuant to the Old Australian Securities Exchange Disciplinary Processes and Appeals Rulebook (as defined in Regulation 3.14B); or~~
 - (iv) ~~a Participant fails to comply with any action taken by Austraclear in accordance with Regulation 3.11 or the provisions of the ASX Enforcement and Appeals Rulebook (including as may be affirmed or varied by the Appeal Tribunal (as the case may be following an appeal against such action) pursuant to the ASX Enforcement and Appeals Rulebook).~~
- ~~the~~ Committee may suspend the Participant Status, ~~and~~ ~~in the circumstances set out in paragraph (i) above~~ terminate the Participant Status, of the relevant Participant or Participating Bank (as the case may be).
- (b) If the Participant is a Participating Bank, the Committee may, in addition to its rights under paragraph (a), suspend the Participant Status of any Participant who maintains its Nominated Account with that Participating Bank.
- (c) Where Austraclear receives a notice under paragraph (d) of Regulation 3.9 or otherwise becomes aware that a Participant or a Participating Bank has become subject to a Change in Control, the Committee may suspend the Participant Status or terminate the Participant Status of the relevant Participant or Participating Bank (as the case may be).

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3.11 Enforcement for Breach of Regulations

Where Austraclear considers that a Participant has breached any provision of these Regulations or is considered by the Committee to have engaged in conduct that is contrary to the interests of the Participants, or the System the matter will be dealt with in accordance with the provisions of the ASX Enforcement~~ustralian Securities Exchange Disciplinary Processes~~ and Appeals Rulebook.

3.12 Suspension

Where Austraclear pursuant to the Regulations ~~or the Disciplinary Tribunal or Appeal Tribunal pursuant to the Australian Securities Exchange Disciplinary Processes and Appeals Rulebook~~ suspends a Participant's Participant Status:

- (a) no Transaction to which that Participant is a party may be Settled until the suspension is lifted;
- (b) Austraclear, ~~the Disciplinary Tribunal or the Appeal Tribunal (as the case may be)~~ must as soon as practicable after the suspension, review the Participant's Participant Status to determine whether the Participant will comply with the conditions for Participant Status for the relevant class of Participant;
- (c) the Participant must give Austraclear, ~~the Disciplinary Tribunal or the Appeal Tribunal (as the case may be)~~ any information requested by Austraclear, ~~the Disciplinary Tribunal or the Appeal Tribunal (as the case may be)~~ to enable it to review the Participant's Participant Status; and
- (d) Austraclear, ~~the Disciplinary Tribunal or the Appeal Tribunal (as the case may be)~~, after its review, may continue the suspension (in which case it must be periodically reviewed), terminate the Participant's Participant

Status or lift the suspension (which it may only do if it forms the view that the continuing use of the System by the Participant will not be contrary to the interests of the Participants of the System and which may be on any conditions that Austraclear, ~~the Disciplinary Tribunal or the Appeal Tribunal (as the case may be)~~ considers, in its absolute discretion, to be appropriate).

3.13 Appeals against Monetary Penalties~~Fines~~, Extended Suspension or Termination

- (a) Subject to paragraph (b), where ~~the Disciplinary Tribunal~~ Austraclear under Regulation 3.11 imposes a monetary penalty on~~fin~~es a Participant, ~~suspends a Participant's Participant Status or terminates a Participant's Participant Status~~, or Austraclear ~~or the Disciplinary Tribunal (as the case may be)~~ under Regulation 3.12 ~~suspends or~~ continues an existing suspension so that the total period of the suspension is more than 10 continuous Business Days or terminates a Participant's Participant Status the matter may be appealed in accordance with the provisions of the ~~Australian Securities Exchange Disciplinary Processes~~ ASX Enforcement and Appeals Rulebook.
- (b) A Participant or Participating Bank has no right of appeal against an exercise of the Committee's rights under Regulation 3.10.

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3.14A Transitional Provisions [Deleted]

3.14A.1 Transitional Provisions

Following the Effective Time:

- ~~(a) — the Disciplinary Tribunal and Appeal Tribunal will have jurisdiction pursuant to the Australian Securities Exchange Disciplinary Processes and Appeals Rulebook and may Commence disciplinary proceedings or appeal proceedings (as the case may be) under those Rules (including the holding of any hearings or engaging in any procedures) after the Effective Time in respect of a Regulated Person concerning any conduct under, or any failure to comply with, the Regulations, irrespective of whether that conduct or failure occurred before or after the Effective Time or when Austraclear became aware of, or should have become aware of, that conduct or failure;~~
- ~~(b) — where disciplinary proceedings or appeal proceedings (including the holding of any hearings or engaging in any procedures) have Commenced prior to the Effective Time in respect of a Regulated Person concerning any conduct under, or any failure to comply with, the Regulations, the relevant Old Tribunal shall continue to conduct the relevant disciplinary proceedings (including any appeal proceedings from those disciplinary proceedings) or appeal proceedings (as the case may be) in accordance with, and pursuant to its jurisdiction under, the provisions of the Old Regulations;~~
- ~~(c) — the maximum penalty that may be imposed on a Regulated Person shall be the maximum penalty that would have been imposed for the relevant conduct under the Regulations in existence at the time that the relevant conduct occurred, irrespective of whether the disciplinary proceedings or appeal proceedings (as the case may be) were Commenced before or after the Effective Time or whether the disciplinary proceedings or appeal proceedings (as the case may be) were conducted by an Old Tribunal pursuant to the Old Regulations or the Disciplinary Tribunal or Appeal Tribunal (as the case may be) pursuant to the Australian Securities Exchange Disciplinary Processes and Appeals Rulebook;~~
- ~~(d) — the Old Tribunal pursuant to the Old Regulations and the Disciplinary Tribunal and Appeal Tribunal pursuant to the Australian Securities Exchange Disciplinary Processes and Appeals Rulebook shall conduct the disciplinary proceedings or appeal proceedings (as the case may be) with due regard to the relevant Regulations that were in force at the time that they were alleged to be contravened; and~~
- ~~(e) — Old Regulations continue to apply in respect of the Regulated Person to the extent required to give effect to the paragraphs above.~~

3.14A.2 Definitions

For the purposes of this Rule 3.14A the following definitions apply:

“Commence” means:

- (a) ~~in relation to disciplinary proceedings prior to the Effective Time, the giving of notice under Regulation 3.11(b) by Austraclear to the Participant in force immediately before the Effective Time;~~
- (b) ~~in relation to disciplinary proceedings following the Effective Time, the provision of a notice by Austraclear to a Regulated Person pursuant to Rule 2.1 of the Australian Securities Exchange Disciplinary Processes and Appeals Rulebook; and~~
- (c) ~~in relation to appeal proceedings prior to the Effective Time, the lodgment of a notice of appeal by a Regulated Person under Regulations 2.9(e) or 3.13(a)(iii) in force immediately before the Effective Time; and~~
- (d) ~~in relation to appeal proceedings following the Effective Time, the provision of a notice of appeal by the relevant person pursuant to Rule 3.1 of the Australian Securities Exchange Disciplinary Processes and Appeals Rulebook.~~

“Effective Time” means the date set out in the Procedures to the Australian Securities Exchange Disciplinary Processes and Appeals Rulebook;

“Old Regulations” means the Austraclear Regulations which were in force immediately before the Effective Time;

“Old Tribunal” means the Committee or Independent Arbitrator (as the context requires) in existence immediately before the Effective Time; and

“Regulated Person” means a Participant as defined in Rule 1.1 of the Regulations or an Applicant as defined in Rule 2.1 of the Regulations, unless otherwise provided or required under the Regulations or the Australian Securities Exchange Disciplinary Processes and Appeals Rulebook.

Introduced 31/03/08

3.14B Transitional Provisions

3.14B.1 Transitional Provision Definitions

For the purposes of this Rule 3.14B:

“Commence” means:

- (a) in relation to disciplinary proceedings relating to conduct or a failure prior to the Effective Time, the provision of a contravention notice by Austraclear to the Regulated Person pursuant to Rule 2.1 of the Old Australian Securities Exchange Disciplinary Processes and Appeals Rulebook; and
- (b) in relation to appeal proceedings relating to conduct or a failure prior to the Effective Time, the provision of notice of appeal by the relevant person pursuant to Rule 3.1 of the Old Australian Securities Exchange Disciplinary Processes and Appeals Rulebook.

“Effective Time” means the date of commencement of Schedule 1 to the *Corporations Amendment (Financial Market Supervision) Act 2010.*

“Old Austraclear Rules” means the Austraclear Regulations in force before the Effective Time.

“Old Australian Securities Exchange Disciplinary Processes and Appeal Rulebook” means the Australian Securities Exchange Disciplinary Processes and Appeals Rulebook in force before the Effective Time;

“Old Tribunal” means the Disciplinary Tribunal or Appeal Tribunal (as the context requires) convened in accordance with the Old Australian Securities Exchange Disciplinary Processes and Appeal Rulebook, irrespective of whether it is convened before or after the Effective Time.

“Relevant Person” or “Regulated Person” means a Participant as defined in Rule 1.1 of the Regulations or an Applicant as defined in Rule 2.1 of the Regulations.

3.14B.2 Sanctions

Following the Effective Time:

- (a) Austraclear will have jurisdiction pursuant to Regulation 3.11 and the ASX Enforcement and Appeals Rulebook and may take any action under that rule or rulebook in respect of a Relevant Person concerning any conduct or failure under:
- (i) these Regulations, where that conduct or failure occurred on or after the Effective Time; or
 - (ii) these Regulations and the Old Austraclear Rules, where the relevant conduct or failure the subject of the action spans both prior to and following the Effective Time, irrespective of when Austraclear became aware of, or should have become aware of, that conduct or failure;
- (b) the Appeal Tribunal will have jurisdiction pursuant to the ASX Enforcement and Appeals Rulebook and may conduct appeal proceedings (including the holding of any hearings or engaging in any procedures) under those Rules in respect of a Relevant Person concerning any conduct or failure under:
- (i) these Regulations, where that conduct or failure occurred after the Effective Time; or
 - (ii) these Regulations and the Old Austraclear Rules, where the relevant conduct or failure the subject of the proceedings spans both prior to and following the Effective Time, irrespective of when Austraclear became aware of, or should have become aware of, that conduct or failure;
- (c) Austraclear will continue to have jurisdiction pursuant to the Old Austraclear Rules and the Old Australian Securities Exchange Disciplinary Processes and Appeals Rulebook and may take disciplinary action under those rules or rulebook after the Effective Time in respect of a Regulated Person concerning any conduct under or any failure to comply with the Old Austraclear Rules, where that conduct or failure occurred prior to the Effective Time, irrespective of when Austraclear became aware of, or should have become aware of, that conduct or failure;
- (d) the Old Tribunal shall continue to have jurisdiction to conduct disciplinary proceedings (including any appeal proceedings from those disciplinary proceedings) or appeal proceedings (as the case may be) in accordance with, and pursuant to its jurisdiction under, the provisions of the Old Australian Securities Exchange Disciplinary Processes and Appeal Rulebook in respect of a Regulated Person concerning any conduct under or any failure to comply with the Old Austraclear Rules, where that conduct or failure occurred prior to the Effective Time, irrespective of whether disciplinary or appeal proceedings have Commenced prior to the Effective Time or when Austraclear became aware of, or should have become aware of, that conduct or failure;
- (e) for the purposes of paragraphs (c) and (d) above:
- (i) the maximum penalty that may be imposed on a Regulated Person shall be the maximum penalty that would have been imposed for the relevant conduct or failure under the rules in existence at the time that the relevant conduct or failure occurred, irrespective of whether the disciplinary proceedings or appeal proceedings (as the case may be) were Commenced before or after the Effective Time;
 - (ii) Austraclear and the Old Tribunal shall take disciplinary action and conduct the disciplinary proceedings or appeal proceedings (as the case may be) with due regard to the relevant rules that were in force at the time that they were alleged to be contravened;
- (f) the Old Austraclear Rules and the Old Australian Securities Exchange Disciplinary Processes and Appeals Rulebook continue to apply in respect of the Regulated Person to the extent required to give effect to the paragraphs above;
- (g) Nothing in this Regulation 13.4B.2 limits the continued operation of regulation 13.4A of the Old Austraclear Rules where disciplinary proceedings or appeal proceedings have Commenced (as defined in the Old Austraclear Rules) prior to the Effective Time (as defined in the Old Austraclear Rules).

3.14B.3 Conduct spanning pre and post Effective Time

For the avoidance of doubt, where the relevant conduct or failure the subject of the action or proceeding spans both prior to and following the Effective Time:

(a) Austraclear and the Appeal Tribunal will have the jurisdiction and may take action or conduct appeal proceedings as referred to in Rules 3.14B.2(a) & (b) above;

(b) Rules 3.14B.2(c), (d) and (e) do not apply to such conduct or failure.

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16.2 Methods of Settlement

For the purposes of Regulation 16.2(c), the prescribed kinds of Cash Elements and the manner in which the Cash Element is to be dealt with are:

(a) the Cash Elements of Transactions to be Settled in respect of Australian Securities~~Sydney Futures~~ Exchange Limited 90 day bank bills delivery which, when the Transaction is Entered, can only be nominated for Immediate Settlement; and

(b) the Cash Elements of Funds Transfers which are dealt with in accordance with Regulation 12.13(a).

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