

SECTION 16 STATE OF EMERGENCY, UNDESIRABLE PRACTICES AND IMPOSSIBILITY OF PERFORMANCE

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SECTION 16 STATE OF EMERGENCY, UNDESIRABLE PRACTICES AND IMPOSSIBILITY OF PERFORMANCE

This Section sets out:

- (a) The wide powers of ASX Clear to deal with a State of Emergency in whatever way it considers necessary and identifies the effect of a State of Emergency, the duration of any State of Emergency Rules and the notice that must be given by ASX Clear to Participants in respect of any State of Emergency Rules or to Participants and others if ASX Clear is unable to perform any of its obligations;
- (b) The obligation on Participants to inform ASX Clear of any event or condition that may lead to a State of Emergency;
- (c) The powers of ASX Clear to deal with an event or series of events which, although not giving rise to a State of Emergency, nevertheless make it impossible or impracticable for the parties to a Derivatives CCP Contract to perform their obligations or exercise their rights, including the power to terminate those contracts; and
- (d) The powers of ASX Clear to address undesirable situations and practices.

16.1 STATE OF EMERGENCY

16.1.1 Action if a State of Emergency exists

If ASX Clear determines that a State of Emergency exists ASX Clear may take or authorise any action it considers necessary for the purpose of dealing with the State of Emergency, including:

- (a) making State of Emergency Rules (that may be inconsistent with these Rules) for the protection of the interests of ASX Clear and Participants;
- (b) suspending provision of any ASX Clear services to one or more persons;
- (c) taking, or refraining from taking, or directing a Participant to take or refrain from taking, any action which ASX Clear considers is appropriate;
- (d) taking any action in the name of and at the expense of a Participant; or
- (e) other action that is inconsistent with these Rules (other than this Rule 16.1).

In the event of conflict between the State of Emergency Rules and these Rules, the State of Emergency Rules will prevail.

Introduced 11/03/04 Origin SCH 1.6.1, 1.6.3 Corresponds to ASX Settlement1.3

16.1.2 ASX Clear's additional powers

In addition to the powers that ASX Clear has under Rule 16.1.1 to deal with a State of Emergency, in relation to:

- (a) a Cash CCP Transaction, ASX Clear may transfer, under Rule 16.1.5, any Cash CCP Transaction;
- (b) a Derivatives CCP Contract, ASX Clear may transfer, under Rule 16.1.5, or terminate, under Rule 17, any Derivatives CCP Contract registered in an Account of a Participant; and
- (c) a Deliverable Derivatives CCP Contract, ASX Clear may extend the places at or from which delivery may be made or permit delivery of the Underlying Commodity which does not meet the Approved Listing Market Operator's contract specifications, or both, subject to payment of compensation to persons specified by ASX Clear.

Introduced 11/03/04 Origin OCH 13.3 Amended 10/06/04, 27/06/11

16.1.3 Cessation of Clearing authorisation or entire arrangement

If:

- (a) ASX Clear ceases to be licensed under the Corporations Act to operate a clearing facility;
- (b) an Approved Market Operator ceases to operate or ceases to be licensed to operate the market in respect of which ASX Clear and an Approved Settlement Facility provide a Trade Acceptance Service; or
- (c) an agreement between ASX Clear, an Approved Settlement Facility and an Approved Market Operator under which ASX Clear and the Approved Settlement Facility provide a Trade Acceptance Service is terminated,

ASX Clear may:

- (d) terminate any Derivatives CCP Contracts in respect of that Approved Market Operator under Rule 17; and/or
- (e) take or refrain from taking, or direct a Participant to take or refrain from taking any action which ASX Clear considers appropriate.

Further, if ASX Clear ceases to be licensed under the Corporations Act to provide clearing services in relation to Derivatives CCP Contracts resulting from the registration of OTC Options Market Transactions ASX Clear may:

- (f) terminate any such Derivatives CCP Contracts; and/or
- (g) take or refrain from taking, or direct a Participant to take or refrain from taking, any action which ASX Clear considers appropriate.

Introduced 11/03/04 Origin OCH 13.4.1 Amended 27/06/11, 28/05/12

16.1.4 Cessation of arrangement in respect of some Series only

If:

- (a) Rule 16.1.3(a) or (b) relate to some but not all of the Series open for trading on the market of an Approved Listing Market Operator; or
- (b) ASX Clear and an Approved Settlement Facility cease to provide a Trade Acceptance Service to an Approved Listing Market Operator in respect of a Series or Delivery Month under the agreement under which ASX Clear and the Approved Settlement Facility provide the Trade Acceptance Service,

ASX Clear may:

- (c) terminate the Derivatives CCP Contracts in that Series or Delivery Month under Rule 17; and/or
- (d) take or refrain from taking, or direct a Participant to take or refrain from taking any action which ASX Clear considers appropriate.

Introduced 11/03/04 Origin OCH 13.4.2 Amended 27/06/11

16.1.5 Transfer and novation of Cash CCP Transactions and Derivatives CCP Contracts to another Approved Clearing Facility

If Rules 16.1.3(a) or (b) or 16.1.4(a) or (b) apply, each Participant agrees that ASX Clear may, transfer and novate a Cash CCP Transaction or Derivatives CCP Contract to an Approved Clearing Facility. That transfer and novation may occur pursuant to an agreement between ASX Clear and the Approved Market Operator, an agreement between ASX Clear and the Approved Clearing Facility, a direction by the Commission, the Minister or other competent authority, or otherwise. Each Participant agrees that neither ASX Clear, nor the Approved Clearing Facility to which the transactions or contracts are transferred, will require any further consent or agreement from the Participant to effect that transfer and novation. Each Participant agrees that ASX Clear will not be liable for, or responsible for performing, any obligations in respect of the transferred and novated transactions or contracts which arise following the transfer and novation.

Introduced 11/03/04 Origin OCH 13.4.3 Amended 19/08/09

16.1.6 Effect of a State of Emergency

No person bound by the Rules is liable for failure to comply with a Rule (other than a State of Emergency Rule) if, and to the extent to which, compliance has been delayed, interfered with, curtailed or prevented by a State of Emergency.

Introduced 11/03/04 Origin SCH 1.5.3 Corresponds to ASX Settlement 1.3.2

16.1.7 Duration of State of Emergency Rules

ASX Clear may specify the period during which any State of Emergency Rules remain in force, but the period must not exceed 30 Business Days. If ASX Clear does not specify a period during which any State of Emergency Rules remain in force, the State of Emergency Rules remain in force for 30 Business Days.

Introduced 11/03/04 Origin SCH 1.6.2 Corresponds to ASX Settlement 1.3.3

16.1.8 Notice to Participants

ASX Clear must promptly notify Participants of the making of any State of Emergency Rules.

Introduced 11/03/04 Origin SCH 1.6.4 Corresponds to ASX Settlement 1.3.4

16.1.9 Participants must inform of potential State of Emergency

A Participant or other Regulated Person that becomes aware of any event or condition that may lead to a State of Emergency must immediately inform ASX Clear.

Introduced 11/03/04 Origin SCH 1.6.5 Corresponds to ASX Settlement 1.3.5

16.1.10 No Liability of ASX Clear

Without limiting any other liability provisions in these Rules, none of ASX Clear, its officers, agents, contractors or persons acting for or on behalf of ASX Clear are liable to a Participant or any other person for:

- (a) any failure or delay in performance in whole or in part of the obligations of ASX Clear under the Rules or any contract, if that failure or delay is caused directly or indirectly by a State of Emergency or other circumstance which entitles ASX Clear to act under this Section 16; or
- (b) any loss, liability, damage, cost or expense arising in any way (including, without limitation, by negligence) from the bona fide exercise of any power, right or discretion conferred upon ASX Clear by this Section 16.

Introduced 11/03/04 Origin OCH 13.6 Corresponds to ASX Settlement 1.3.6

16.2 UNDESIRABLE SITUATIONS AND PRACTICES

16.2.1 Action by ASX Clear

If ASX Clear determines that an undesirable situation or practice is developing or has developed, ASX Clear may take, or refrain from taking, or direct a Participant to take, or refrain from taking, any action which ASX Clear considers is appropriate having regard to Rule 1.15.

Introduced 11/03/04 Origin OCH 13.1 Amended 18/12/06

16.3 ASX CLEAR TO NOTIFY PARTICIPANTS AND APPROVED MARKET OPERATOR

16.3.1 Requirement on ASX Clear to notify

If:

- (a) ASX Clear is unable to perform or is delayed in performing any of its obligations under the Rules or any contract as a result of a State of Emergency or any other circumstance which entitles ASX Clear to act under this Section 16; or
- (b) ASX Clear exercises its powers under Rules 16.1, 16.2 or 16.5,

ASX Clear will notify as soon as practicable the Participants and any Approved Market Operator or Approved Settlement Facility affected.

Introduced 11/03/04 Origin OCH 13.5

16.4 APPOINTMENT OF ASX CLEAR AS AGENT

16.4.1 Participants irrevocably appoint ASX Clear as agent

Each Participant irrevocably appoints severally ASX Clear, and every officer, agent, person acting for or on behalf of ASX Clear and each other representative for the time being of ASX Clear, at the option of ASX Clear, to be the agent of the Participant and irrevocably authorises ASX Clear and every officer, agent, person and other representative for the time being of ASX Clear, at the option of ASX Clear, to do all acts and execute all documents on its behalf for the purpose of exercising the powers conferred on ASX Clear by this Section 16.

Introduced 11/03/04 Origin OCH 13.7

16.5 IMPOSSIBILITY OR IMPRACTICABILITY OF PERFORMANCE OF DERIVATIVES CCP CONTRACTS

16.5.1 Action by ASX Clear

If:

- (a) an event or series of events (whether related or not) occurs which is not determined by ASX Clear to be a State of Emergency but ASX Clear considers that it is impossible or impracticable for the parties to a Derivatives CCP Contract to perform their obligations or exercise their rights; and
- (b) ASX Clear considers that termination of those Derivatives CCP Contracts is appropriate having regard to Section 1.15,

ASX Clear may after consultation with the Approved Listing Market Operator, terminate those Derivatives CCP Contracts under Rule 17. Where the Derivatives CCP Contract is Deliverable, ASX Clear may, alternatively, exercise one or more of the following powers:

- (c) defer the settlement of the Derivatives CCP Contracts until it determines that settlement can occur at a later time in accordance with the settlement process in these Rules;

- (d) determine that settlement of the Derivatives CCP Contracts should be effected in a manner other than that specified in these Rules;
- (e) direct Participants to close out the Derivatives CCP Contracts; or
- (f) take any other action ASX Clear considers appropriate having regard to Rule 1.15.

Introduced 11/03/04 Origin OCH 13.2 Amended 27/06/11

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