

## **SECTION 22 TRANSITIONAL ARRANGEMENTS FOR EXISTING ASX PARTICIPATING ORGANISATIONS (CASH MARKET TRANSACTIONS)**

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## **SECTION 22      TRANSITIONAL ARRANGEMENTS FOR EXISTING ASX PARTICIPATING ORGANISATIONS (CASH MARKET TRANSACTIONS)**

Section 22 only applies to existing ASX Participating Organisations which were recognised as Clearing Participants able to clear ASX Transactions under the Old ASX Business Rules and which were admitted as Brokers under the Old SCH Business Rules. This section deals with:

- (a)      transitioning Brokers under the Old SCH Business Rules as Participants under these Rules;
- (b)      transitioning novated ASX Transactions under the Old SCH Business Rules as Cash CCP Transactions under these Rules;
- (c)      transitioning the Clearing Agreement between ASX Trading Participants and ASX Clearing Participants to a Clearing Agreement between the same parties as that Approved Market Operator's Market Participant and that Participant under these Rules including Schedule 3; and
- (d)      abolishing approval of partnership structures on the first anniversary after Implementation Date (i.e. the date these Rules come into effect).

### **22.1      INTERPRETATION AND APPLICATION OF THIS RULE**

#### **22.1.1      Interpretation**

In this Rule 22:

"**Affiliate**" means an Existing Affiliate or a New Affiliate.

"**Affiliate Based CP**" means an Existing Participant to which ASX granted recognition as a Participating Organisation under the Old ASX Recognition Rules on the basis that one or more directors of an Existing Participant were recognised as Affiliates.

"**Approved Representative**" means an Existing Approved Representative or a New Approved Representative;

"**ASX Settlement**" means ASX Settlement Pty Limited ABN 49 008 504 532.

"**ASX Market Rules**" means the business rules of ASX in force as at the Implementation Date.

"**ASX Transaction**" has the meaning given to it under the ASX Market Rules.

"**Broker**" has the meaning given to it under the Old SCH Business Rules.

“CCP” has the meaning given to it under the Old SCH Business Rules.

“CHESS Approved Financial Products” has the meaning given to it under the Old SCH Business Rules.

“Effective Time” means 2 December 2002 being the time which OCH notified Participants as being the time at which OCH Rule 1A became effective.

"Existing Affiliate" means a person who was recognised by ASX as an "Affiliate" under the Old ASX Business Rules.

"Existing Approved Representative" means a person who was an "Approved Representative" under the Old ASX Business Rules.

"Existing Participant" means a person which, immediately before the Implementation Date, was admitted by ASX Settlement as a Broker under Rule 2.1.1 of the Old SCH Business Rules.

“Implementation Date” means the time at which ASX Clear notifies Participants as being the time at which these Rules become effective.

"New Affiliate" means a person who becomes an Affiliate during the Recognition Transitional Period under Rule 22.4.1(e);

"New Approved Representative" means a person who becomes an Approved Representative during the Recognition Transitional Period under Rule 22.4.1(e).

“Novated CHES Transaction” means a transaction in a CHES Approved Financial Product which has been novated to CCP under the Old SCH Business Rules but in relation to which Settlement Obligations have not been discharged by the Implementation Date.

“OCH” means Options Clearing House Pty Limited ABN 48 001 314 503.

"Old ASX Business Recognition Rules" means the business rules of ASX governing the recognition of Participating Organisations of ASX and the role and conduct of Affiliates and Approved Representatives in force immediately prior to 16 July 2002 (being the date on which rule 5 of the business rules of ASX was amended).

"Old ASX Business Rules" means the ASX Business Rules in force immediately before the Implementation Date relating to the clearing and settlement of CHES Approved Financial Products between ASX and its respective participants.

“Old SCH Business Rules” means the SCH Business Rules in force immediately before the Implementation Date relating to the clearing and settlement of CHES Approved Financial Products between ASX Settlement and its respective participants.

"Recognition End Date" means the earlier of:

- (a) the date on which the Recognition Transitional Period ends; or
- (b) in the case of an Affiliate or an Approved Representative involved in the business of a particular Existing Participant, the date on which the Existing Participant makes an election under Rule 22.4.2.

**"Recognition Transitional Period"** means the period from the Implementation Date up to and including 15 July 2004, unless extended under Rule 22.4.4.

**"SCH"** means ASX Settlement as the operator of a licensed clearing and settlement facility under the Corporations Act.

**"SCH Business Rules"** means the business rules of ASX Settlement in force as at the Implementation Date.

**"Trading Participant"** has the meaning given to it under the Old ASX Business Rules.

Introduced 11/03/04 Origin OCH 1A.1.1

## 22.1.2 Application

This Rule 22 applies to:

- (a) Existing Participants;
- (b) Existing Affiliates engaged in the business of an Existing Participant; and
- (c) Existing Approved Representatives engaged in the business of an Existing Participant,

in respect of admission under the Old SCH Business Rules, ASX Transactions under the Old ASX Business Rules and Novated CHESS Transactions under the Old SCH Business Rules.

Introduced 11/03/04 Origin OCH 1A.1.2

## 22.2 TRANSITION OF ADMISSION AND RELATED MATTERS

### 22.2.1 Transition

From the Implementation Date:

- (a) each Existing Participant is taken to be admitted as a:
  - (i) Direct Participant under these Rules; or
  - (ii) General Participant under these Rules where the Existing Participant has entered into a Clearing Agreement under Old ASX Business Rule 2.1A.4;
- (b) each Novated CHESS Transaction at that time is taken to be a Cash CCP Transaction within the meaning of these Rules and the "Buying Broker" and "Selling Broker" of each of those Novated CHESS Transactions under the Old SCH Business Rules are taken to be the receiving Participant and the delivering Participant respectively of each of the corresponding Cash CCP Transactions under these Rules;
- (c) each Existing Affiliate and each Existing Approved Representative engaged in the business of an Existing Participant at the Implementation Date, is taken to be

recognised as an Affiliate or Approved Representative (as applicable) under these Rules;

- (d) each person recognised as a "Responsible Executive" under the Old ASX Business Rules is taken to be recognised as a Responsible Executive under these Rules;
- (e) subject to Rule 22.2.2, the Old ASX Business Rules and the Old SCH Business Rules cease to apply to the Existing Participants, the Novated CHESST Transactions, the Existing Affiliates and the Existing Approved Representatives referred to in paragraphs (a), (b), (c) and (d);
- (f) where an agreement between an Existing Participant and a Client under Old ASX Business Rule 3.1A(2)(d) created a deemed agreement, or under Old ASX Business Rule 3.1A(4) created a written agreement, those terms continue to operate under these Rules following the Implementation Date until the relationship ceases or is replaced with another agreement between the parties in accordance with these Rules;
- (g) where before the Implementation Date, an Existing Participant and a Trading Participant were party to a Clearing Agreement under Old ASX Business Rule 2.1A.4, those terms continue to operate under these Rules and to the extent of any inconsistency between the terms of that Clearing Agreement and the terms set out in these Rules (including without limitation, Rule 9.1 and Schedule 3) the terms set out in these Rules prevail;
- (h) each Existing Participant is taken to be authorised to clear the categories of transaction that it was entitled to clear under the Old SCH Rules; and
- (i) where a Participant has previously notified ASX, or since the Effective Time notified OCH, of the details of an Affiliate or Approved Representative, that Affiliate or Approved Representative is, for the purpose of the Corporations Act, a recognised affiliate of ASX Clear. Recognition continues for the purposes of ongoing jurisdiction in relation to that part of the business which is or was under the supervision and control of the Affiliate or Approved Representative.

Introduced 11/03/04 Origin OCH 1A.2.1

## **22.2.2 Effect of transition on existing rights and obligations**

Rule 22.2.1 does not affect any accrued rights which ASX, ASX Settlement, ASX Clear or any other person has against an Existing Participant or any other person under the Old ASX Business Rules or the Old SCH Business Rules or any accrued obligations which the Existing Participant or any other person has under the Old ASX Business Rules or the Old SCH Business Rules to ASX, ASX Settlement, ASX Clear or to any other person. Without limiting this Rule 22.2.2, following the Implementation Date:

- (a) ASX will continue to have jurisdiction in respect of an Existing Participant concerning any conduct or any failure to comply with the Old ASX Business Rules which occurred before the Implementation Date;
- (b) ASX Settlement will continue to have jurisdiction in respect of an Existing Participant concerning any conduct or any failure to comply with the Old SCH Business Rules which occurred before the Implementation Date;

- (c) the Existing Participant continues to be bound by any warranty, undertaking or indemnity given by the Existing Participant under the Old ASX Business Rules to ASX, OCH or any other person;
- (d) the Existing Participant continues to be bound by any warranty, undertaking or indemnity given by the Existing Participant under the Old SCH Business Rules to SCH or any other person;
- (e) any authority to act granted by an Existing Participant to CCP or ASX Settlement under the Old SCH Business Rules in relation to matters falling within these Rules is taken to be granted by the Existing Participant to ASX Clear under these Rules;
- (f) any condition, restriction or limitation imposed on an Existing Participant or any waiver granted to an Existing Participant under the Old SCH Business Rules to the extent that they are applicable to these Rules are taken to be imposed or granted under these Rules;
- (g) other ASX Business Rules and SCH Business Rules continue to apply in respect of the Existing Participant and any Responsible Executive, Existing Affiliate and Existing Approved Representative to the extent required to give effect to paragraphs (a), (b), (c), (d), (e) and (f); and
- (h) the ASX Business Rules continue to apply to the Existing Participant and any Responsible Executive, Existing Affiliates and Existing Approved Representatives to the extent that the Existing Participant continues to be a Participating Organisation of ASX in a capacity other than as a Participant under these Rules.

Introduced 11/03/04 Origin OCH 1A.2.2

## **22.3 AFFILIATE BASED CP – END OF AFFILIATE STATUS AND APPROVED REPRESENTATIVES**

### **22.3.1 Recognition ceases at Recognition End Date**

On the Recognition End Date, ASX Clear will cease to recognise:

- (a) Affiliates as "Affiliates"; and
- (b) Approved Representatives as "Approved Representatives".

Introduced 11/03/04 Origin OCH 1A.3.1

### **22.3.2 Effect of end of recognition**

The end of recognition under Rule 22.3.1 does not affect any accrued rights which ASX Clear or other persons have against an Affiliate or Approved Representative or any accrued obligations which the Affiliate or Approved Representative has to ASX Clear or to other persons. Without limiting this Rule 22.3.2, following the Recognition End Date:

- (a) ASX Clear will continue to have jurisdiction in respect of the Affiliate or Approved Representative concerning any conduct or any failure to comply with the Rules which occurred before the Recognition End Date;

- (b) the Affiliate or Approved Representative continues to be bound by any warranty, undertaking or indemnity given by the Affiliate or Approved Representative under the Rules;
- (c) other Rules continue to apply in respect of the Affiliate or Approved Representative to the extent required to give effect to paragraphs (a) and (b); and
- (d) the Participant remains responsible for each Affiliate and Approved Representative involved in its business in accordance with Rule 4.9.

Introduced 11/03/04 Origin OCH 1A.3.2

## **22.4 AFFILIATE BASED CP – ONGOING COMPLIANCE DURING TRANSITIONAL PERIOD**

### **22.4.1 Transitional arrangements**

Until its Recognition End Date:

- (a) an Affiliate Based CP must continue to have as directors the number of Affiliates required under the Old ASX Business Rules and the majority of those directors must be resident in Australia;
- (b) an Affiliate Based CP is not required to comply with Rule 4.22, nor any other requirement under these Rules in respect of "Responsible Executives";
- (c) Rule 4.8.1 does not apply, but the Affiliate Based CP must have appropriate management structures in place to ensure that its directors and Affiliates have adequate supervision and effective control over all parts of the Existing Participant's business, wherever the business is located (and keep accurate records of its management structure and its allocation of responsibilities among its directors and Affiliates);
- (d) Rule 4.8.2 does not apply to the Affiliate Based CP, but the Affiliate Based CP must ensure that any branch office of the Affiliate Based CP continues to be supervised by an Approved Representative or an Affiliate, as was required under the Old ASX Recognition Rules;
- (e) an Affiliate Based CP may apply to have a person recognised as an Affiliate, or registered as an Approved Representative and ASX Clear will grant that recognition or registration if the person complies with the requirements for recognition and registration of Affiliates and Approved Representatives which existed under the Old ASX Recognition Rules;
- (f) each Affiliate and Approved Representative must continue to comply with the requirements for the recognition and registration of Affiliates and Approved Representatives which existed under the Old ASX Recognition Rules;
- (g) each New Affiliate and New Approved Representative will be regarded as "Affiliates" and "Approved Representatives" respectively for the purposes of these Rules; and

- (h) the Affiliate Based CP must ensure that each Affiliate and Approved Representative involved in the business complies with any continuing education requirements prescribed by ASX Clear.

For the purposes of this Rule 22.4.1, any obligation to comply with a requirement which existed under the Old ASX Recognition Rules, is to be construed as an obligation to comply with that requirement as if a reference in the relevant Old ASX Recognition Rule to the "Exchange" were a reference to "ASX Clear".

Introduced 11/03/04 Origin OCH 1A.4.1

#### **22.4.2 Election to comply with new requirements**

An Affiliate Based CP may elect by giving notice in writing to ASX Clear, to no longer rely on the transitional arrangements under Rule 22.4.1. Once an Affiliate Based CP has made that election, it may not revoke it.

Introduced 11/03/04 Origin OCH 1A.4.2

#### **22.4.3 Compliance following end of recognition transitional period or election under Rule 22.4.2**

Following the Recognition End Date, ASX Clear may terminate the admission of the Affiliate Based CP as a Participant unless it complies with all of the requirements of Section 3 and Section 4.

Introduced 11/03/04 Origin OCH 1A.4.3

#### **22.4.4 Extension of Transitional Arrangements**

The ASX Clear may extend the Recognition Transitional Period in respect of a particular Affiliate Based CP following receipt by ASX Clear of a request in writing from the Affiliate Based CP.

Introduced 11/03/04 Origin OCH 1A.4.4

#### **22.4.5 Interpretation of Rules – Regulated Persons**

In applying the Rules during the Recognition Transitional Period, a reference in the Rules to a Regulated Person includes a reference to an Affiliate and an Approved Representative.

Introduced 11/03/04

### **22.5 AFFILIATE BASED CP – APPROVED REPRESENTATIVES**

#### **22.5.1 Change of details**

An Affiliate Based CP must notify ASX Clear of the following events within 2 Business Days after the event occurs:

- (a) any change of name or residential address of an Approved Representative; or
- (b) any termination of the engagement of the Approved Representative, the date of that termination and the reasons for that termination; or



- (c) the date of cancellation of a proper authority held by an Approved Representative from the Affiliate Based CP.

Introduced 11/03/04 Origin OCH 1A.5.1

## **22.5.2 Cancellation of registration**

If in the opinion of ASX Clear:

- (a) an Approved Representative has failed adequately to supervise Employees of an Affiliate Based CP and the failure has contributed to a breach of the Rules by the Affiliate Based CP or any of its Employees; or
- (b) an Approved Representative has not been engaged in the business of the Affiliated Based CP for a period of 12 months; or
- (c) an Approved Representative no longer complies with the requirements for registration under the Old ASX Recognition Rules,

ASX Clear may, subject to Rule 22.6, cancel the registration of the Approved Representative.

Introduced 11/03/04 Origin OCH 1A.5.2

## **22.5.3 Notice of cancellation**

ASX Clear must notify the Approved Representative and the Affiliate Based CP of the cancellation of the registration under Rule 22.5.2.

Introduced 11/03/04 Origin OCH 1A.5.3

## **22.6 APPEALS FROM DECISIONS OF ASX CLEAR**

### **22.6.1 ASX Clear to give reasons**

Where:

- (a) an Affiliate Based CP applies for a person to be registered as a New Approved Representative under Rule 22.4.1(e) and ASX Clear decides to refuse to register that person as a New Approved Representative;
- (b) an Affiliate Based CP applies for a person to be recognised as a New Affiliate under Rule 22.4.1(e) and ASX Clear decides to refuse to register that person as a New Affiliate;
- (c) ASX Clear decides to cancel the registration of an Approved Representative of an Affiliate Based CP,

ASX Clear must give notice to the Affiliate Based CP of the decision and the reasons in writing for its decision.

Introduced 11/03/04 Origin OCH 1A.6.1

## **22.6.2 Right of Appeal**

The Affiliate Based CP may appeal to the Appeal Tribunal against a decision referred to in Rule 22.6.1 in accordance with the provisions of the ASX Enforcement and Appeals Rulebook.

Introduced 11/03/04 Origin OCH 1A.6.2 Amended 31/03/08

## **22.7 TRANSITIONAL ARRANGEMENTS FOR PARTNERSHIPS**

### **22.7.1 Application**

An Existing Participant which is a partnership will cease to be admitted as a Participant on the first anniversary after the Implementation Date. However, while an Existing Participant which is a partnership continues to be admitted as a Participant, this Rule 22.7 applies to that Existing Participant.

Introduced 11/03/04 Origin OCH 1A.7.1

### **22.7.2 Admission Requirements**

Rules 3.2.1(a) and (b) do not apply to an Existing Participant which is a partnership but the other Admission Requirements (as modified by this Rule 22.7) apply.

For the purposes of the business integrity requirements set out in Rule 3.4, where an Existing Participant consists of two or more partners, each of those partners must comply with paragraph (b) of that Rule.

Introduced 11/03/04 Origin OCH 1A.7.2

### **22.7.3 Conditions**

Without limiting the power to impose conditions under Rule 3.1.4, ASX Clear may impose conditions on admission which it considers appropriate to address issues arising from the use of a partnership.

Introduced 11/03/04 Origin OCH 1A.7.3

### **22.7.4 Partnership treated as separate person**

These Rules apply to the partnership as if it were a person. In addition, the obligations which are imposed on the Existing Participant are imposed on each partner, but may be discharged by any of the partners.

Introduced 11/03/04 Origin OCH 1A.7.4

### **22.7.5 Breach of Rules**

Any breach of a Rule that would be a breach by the partnership, or by any partner, is taken to have been a breach by each partner.

Introduced 11/03/04 Origin OCH 1A.7.5

### 22.7.6 Change in composition of partnership

A change in the composition of the partnership does not affect the continuity of the partnership. No partner of a Participant may be a body corporate.

Introduced 11/03/04 Origin OCH 1A.7.6

### 22.7.7 Overseas partnerships

Where the partnership is formed or resident outside Australia, or any partner is resident outside Australia, ASX Clear may impose requirements similar to those which apply under Rules 3.8 and 4.2.

Introduced 11/03/04 Origin OCH 1A.7.7

### 22.7.8 Disciplinary action

ASX Clear may take disciplinary action or enforcement action under Section 19 against an Existing Participant which is a partnership in the name of the Existing Participant without taking action against each partner in the partnership. If the Existing Participant is determined pursuant to Section 19 to have contravened the Rules or to have engaged in Unprofessional Conduct, each partner is jointly and severally liable to pay any penalty imposed and any other sum directed to be paid to ASX Clear and to ensure that any other sanction imposed by the Old Tribunal (as defined in Rule 19.20), ASX Clear or any Appeal Tribunal is enforced and implemented.

Introduced 11/03/04 Origin OCH 1A.7.8 Amended 01/08/10

### 22.7.9 Interpretation of Rules

In applying the Rules to the partnership:

- (a) a reference in a Rule to a "director" is taken to be a reference to a "partner";
- (b) a reference in a Rule to a "Related Body Corporate" of an Existing Participant (or an applicant) is taken to be a reference to a "Related Party" of any partner;
- (c) a reference in a Rule to an "Employee" is taken to also include a reference to a partner;
- (d) a reference in a Rule to the Existing Participant (or the applicant) being "incorporated" somewhere is taken to be a reference to them being "formed" there; and
- (e) paragraph (a) of the definition of "Controller" the reference to the total votes attached to voting shares is taken to be a reference to the total voting power in the partnership.

Introduced 11/03/04 Origin OCH 1A.7.9

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