



# ASX 24 OPERATING RULES

## SECTION 5 MONITORING CONDUCT AND ENFORCING COMPLIANCE

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## SECTION 5 MONITORING CONDUCT AND ENFORCING COMPLIANCE

### INFORMATION, MONITORING AND INVESTIGATION

#### **Self reporting**

[5000] A Trading Participant must notify the Market Operator in writing immediately if any of the circumstances set out in the Procedures occur.

Amended 20/03/17

#### Procedure 5000 – Self-reporting

For the purposes of Rule [5000] the circumstances are as follows:

- (a) the Trading Participant becomes aware that it has breached any of the Rules or the Procedures and that breach is significant;
- (b) the Trading Participant is also a Clearing Participant and any circumstance exists which constitutes an event of default under the operating rules of an Approved Clearing Facility;
- (c) [deleted]
- (d) the Trading Participant commences legal proceedings against, or becomes aware that legal proceedings have been commenced against it by, another Trading Participant, a Clearing Participant, the Commission or other regulatory authority or a client in connection with their role as a Trading Participant, and those proceedings may affect the operations of the Market Operator or the interpretation of the Rules; or
- (e) the Trading Participant becomes aware or has reasonable grounds for suspecting the existence of any other event or circumstance which adversely affects or may adversely affect its financial position or solvency or its ability to comply with the Rules or Procedures;
- (f) NTA falls below the specified level.

For the purposes of determining whether a breach is significant for the purposes of paragraph (a), a Trading Participant must have regard to the following:

- (g) the number or frequency of similar breaches;
- (h) the impact of the breach on the Trading Participant's ability to comply with any other Rule or Procedure or to conduct its business operations as a Trading Participant;
- (i) the extent to which the breach indicates that a Trading Participant's arrangements to ensure compliance with the Rules and Procedures is inadequate;
- (j) the actual or potential financial loss to the Trading Participant, arising from the breach; and
- (k) any other matters specified by the Market Operator from time to time.

Note: Trading Participants should also refer to Procedure 1400(e) for further matters required to be notified to the Market Operator as part of ongoing general requirements.

Amended 15/06/15, 20/03/17

## Provision of Information

[5010] The Market Operator may at any time investigate the activities of a Trading Participant in relation to the performance by the Trading Participant of its obligations (including for the avoidance of doubt its ability in future to perform its obligations) under the Rules or as the Market Operator otherwise considers appropriate having regard to Rule [6120]. As part of any investigation, the Market Operator may require a Trading Participant to do one or more of the following:

- (a) to provide any information known to the Trading Participant;
- (b) by notice, to provide or permit inspection at the offices of the Trading Participant or any other place notified by the Market Operator at which any records are in the custody, control or possession of the Trading Participant;
- (c) by notice, to appear, and have its Employees appear, for interviews before the Market Operator to give any information required by the Market Operator in relation to the activities of the relevant Trading Participant; or
- (d) by notice, to provide specified information relating to any dealings in Products of the relevant Trading Participant.

*Amended 20/03/17*

[5011] If a Trading Participant is required to provide information or receives a notice under Rule [5010]:

- (a) provide the information, or provide or permit inspection of the records in accordance with the notice;
- (b) appear, and ensure its Employees appear, for interviews before the Market Operator and give the information required by the Market Operator in accordance with the notice;
- (c) provide assistance to the Market Operator as the Market Operator may reasonably require in relation to the information required or the notice; and
- (d) bear any costs incurred by the Trading Participant in connection with providing the information or complying with the notice or providing assistance to the Market Operator.

*Amended 20/03/17*

[5012] The Market Operator may, in connection with any investigation, do one or more of the following:

- (a) give directions about who may be present at an interview of another person;
- (b) impose conditions on the attendance of a person, including in relation to appropriate undertakings as to confidentiality; and
- (c) impose any other requirement which the Market Operator considers to be reasonably necessary to preserve the integrity of the investigation.

A Trading Participant must comply, and ensure that its Employees comply, with any requirement imposed under this Rule [5012].

*Amended 20/03/17*

[5013] The Market Operator may appoint an agent to conduct investigations on its behalf. If the Market Operator appoints an agent to conduct investigations on its behalf the Trading Participant must do all things required under these Rules as if the investigation were conducted by the Market Operator.

*Amended 20/03/17*

[5014] Subject to Rule [5015], if:

- (a) the Market Operator is entitled to exercise its powers against a Trading Participant under Rules [5010] to [5012] in respect of particular circumstances; and
- (b) a Related Body Corporate of the Market Operator has similar powers under its operating rules and is entitled to exercise those powers against the same Trading Participant in respect of the same or similar circumstances,

the Market Operator need not exercise those powers separately but may, exercise those powers together with the exercise by the Related Body Corporate of its powers.

Amended 20/03/17

[5015] Even though the exercise of powers is consolidated under Rule [5014], the Market Operator must comply with the Rules which govern those powers. The consolidation of the exercise of powers under Rule [5014] does not confer on the Market Operator or on the Related Body Corporate any powers in addition to those conferred on them by these Rules or the rules of the Related Body Corporate.

Amended 20/03/17

## Provision of independent expert report or certification

[5020] The Market Operator may by notice to a Trading Participant require the Trading Participant to provide a:

- (a) report from a suitably qualified independent expert approved by the Market Operator expressing an opinion as to:
  - (i) the performance by the Trading Participant of its obligations (including for the avoidance of doubt its ability in future to perform its obligations) under the Rules;
  - (ii) the Trading Participant's capacity to continue to meet the requirements for admission as a Trading Participant or the granting of a relevant Trading Permission; or
  - (iii) any other matter which in the opinion of the Market Operator is necessary to assist the Market Operator in the discharge of its functions under these Rules or as the Market Operator otherwise considers appropriate having regard to Rule [6120]; or
- (b) certification from a suitably qualified independent expert approved by the Market Operator as to compliance by the Trading Participant with the Operational Requirements,

in a form acceptable to the Market Operator, including in such form as may be set out in the Procedures.

Amended 20/03/17

[5021] If the Market Operator gives notice to a Trading Participant requiring that Trading Participant to provide a report or certification under Rule [5020],

- (a) the Market Operator must specify in that notice the date and time by which the Trading Participant is to provide the report or certification; and
- (b) the Trading Participant must provide that report or certification to the Market Operator within the time specified in the notice.

Amended 20/03/17

[5022] If the Market Operator considers that the information contained in the report or certification warrants further investigation it may direct the Trading Participant to do one or both of the following:

- (a) give to the Market Operator or the independent expert further information which the Market Operator considers appropriate having regard to Rule [6120]; and
- (b) require the Trading Participant to cause the independent expert to submit a further report or certification covering further matters specified by the Market Operator by a date and time specified by the Market Operator.

Amended 20/03/17

[5023] If a Trading Participant fails to comply with a requirement of, or direction by, the Market Operator under Rule [5020], [5021] or [5022], the Market Operator may appoint a suitably qualified independent expert to investigate the Trading Participant and prepare a report or certification in a form and within a time determined by the Market Operator.

Amended 20/03/17

[5024] The Trading Participant must give all reasonable assistance required by the independent expert referred to in Rules [5020], [5021], [5022] or [5023] to prepare

the report or certification and must at the request of the independent expert direct third parties to make available all information the independent expert requires.

- [5025] An independent expert appointed by the Market Operator under Rule [5023] is taken to be the Trading Participant's attorney for the purpose of obtaining any information or documents from third parties which in the opinion of the independent expert or the Market Operator are necessary for the independent expert to prepare the report or certification.

*Amended 20/03/17*

- [5026] Unless the Market Operator otherwise determines, the relevant Trading Participant must pay the costs of the report or certification of the independent expert prepared under Rules [5020], [5022] or [5023] and bear any other costs incurred by it in respect of the report or certification.

*Amended 20/03/17*

#### Procedure 5020 – Provision of Independent Expert Report or Certification

At this time there is nothing prescribed.

## SANCTIONS

### **Enforcement actions for breach of rules**

[5100] If the Market Operator considers that a Trading Participant has contravened the Rules or breached a condition imposed by the Market Operator under the Rules, the Market Operator may take any action in accordance with the provisions of the Australian Securities Exchange Enforcement and Appeals Rulebook.

Amended 20/03/17

### **Actions for breaches of Trading Permission Requirements**

[5110] If the Market Operator reasonably considers that:

(a) a Trading Participant is not complying with the Trading Permission Requirements; or

(b) it is otherwise appropriate having regard to Rule [6120],

the Market Operator may immediately suspend or withdraw the Trading Permission of a Trading Participant in whole or in part, including in respect of:

(a) one or more:

(i) Products;

(ii) parts of the Trading Platform; or

(b) a level of Throughput Capacity; or

(c) Client Access under Rule [1140].

Amended 20/03/17

[5111] A suspension of the Trading Permission of a Trading Participant by the Market Operator under Rule [5110] will remain in force until the Market Operator is satisfied that:

(a) the Trading Participant complies, or will comply, with the Trading Permission Requirements; or

(b) the suspension is no longer appropriate having regard to Rule [6120], (as applicable).

Amended 20/03/17



## **Actions for breaches of Operational Requirements**

[5120] If the Market Operator reasonably considers that:

- (a) a Trading Participant is not complying with the Operational Requirements; or
- (b) it is otherwise appropriate having regard to Rule [6120],

The Market Operator may do one or more of the following:

- (a) restrict or prohibit the submission of Trading Messages:
  - (i) containing one or more unique identifiers:
    - a. allocated by the Market Operator under Rule [1300]; or
    - b. allocated by the Trading Participant under Rule [1301]; or
  - (ii) by means of one or more Open Interface Devices or such other device set out in the Procedures of the Trading Participant; or
- (b) direct the Trading Participant to immediately suspend, limit or prohibit the submission of Trading Messages:
  - (i) containing one or more unique identifiers:
    - a. allocated by the Market Operator under Rule [1300]; or
    - b. allocated by the Trading Participant under Rule [1301]; or
  - (ii) which are from a device or person to which or whom such unique identifier(s) referred to in (i) above has/have been allocated; or
- (c) take any other action as may be set out in the Procedures.

Amended 20/03/17

[5121] A restriction, prohibition or direction imposed, or any other action taken, under Rule [5120] will remain in force until the Market Operator is satisfied that:

- (a) the Trading Participant complies, or will comply, with the Operational Requirements; or
- (b) the restriction, prohibition, direction or other action taken is no longer appropriate having regard to Rule [6120], (as applicable).

Amended 20/03/17

### Procedure 5120 – Actions for Breach of Operational Requirements

At this time there is nothing prescribed.

## **Actions for breaches of trading restrictions and limits for Derivative Market Contracts**

[5140] Where a Trading Participant has breached, or, where applicable, caused its Clearing Participant to breach, a Position Limit or an Exercise Limit or a restriction imposed under Rules [3400] to [3420], the Market Operator may do any or all of the following in connection with the enforcement of those limits or restrictions:

- (a) direct the Trading Participant, or its Clearing Participant, to take, or not to take, a specified action;
- (b) take, or refrain from taking, any other action which the Market Operator considers is appropriate having regard to Rule [6120]; and
- (c) request an Approved Clearing Facility to exercise its powers under the Clearing Rules.

Amended 20/03/17

## **Notice of actions taken by the Market Operator under Rules [5110], [5120], or [5140]**

[5150] Where the Market Operator takes action (including for the avoidance of doubt, gives a direction) under Rules [5110], [5120] or [5140]:

- (a) The Market Operator will, as soon as practicable, notify the Trading Participant of the action taken by the Market Operator.
- (b) The Market Operator may publish a market notice (or otherwise make an announcement or publication) detailing the action that has been taken, including the name of the Trading Participant(s) and any other information which the Market Operator considers relevant to such action.

Amended 20/03/17

## **Suspension, termination and other actions against Trading Participant for event of default**

[5160] If the Market Operator considers that an event of default under Rule [5161] has occurred, or if Rule [5162] applies, the Market Operator may take any or all of the following actions in respect of the Trading Participant, in the name of (if appropriate) and at the expense of the Trading Participant, in any order immediately or at any other time the Market Operator determines, and without the need for any prior notice to or consent of the Trading Participant or any other person:

- (a) cancel a Derivatives Market Transaction effected by the Trading Participant which has not been reported to an Approved Clearing Facility for registration;
- (b) suspend the Trading Participant's admission as a Trading Participant;
- (c) subject to Rule [5201] terminate the Trading Participant's admission as a Trading Participant;
- (d) impose restrictions on the Trading Participant's rights or privileges as a Trading Participant; or
- (e) without prejudice to any other rights which the Market Operator may have under the Rules, under statute, at law or in equity, take any other action, or take no action, or direct the Trading Participant to take any action or no action, in order to eliminate or minimise risk with respect to Market Transactions entered into by the Trading Participant or which the Market Operator considers appropriate for the protection of the Market Operator, an Approved Clearing Facility, the Market or other Trading Participants.

Amended 20/03/17

[5161] The Market Operator may regard any of the following events as an event of default by a Trading Participant:

- (a) if the Trading Participant is a Clearing Participant, the Trading Participant ceases to be a Clearing Participant under the Clearing Rules;
- (b) if the Trading Participant is a Clearing Participant, the Trading Participant is suspended from being a Clearing Participant, or suspended from clearing certain categories of Market Transaction under the Clearing Rules;
- (c) if the Trading Participant is not a Clearing Participant, and the Trading Participant's Clearing Guarantee from a Guarantor Clearing Participant is withdrawn;
- (d) the Trading Participant fails to pay any amount due and payable to the Market Operator or an Approved Clearing Facility or fails to perform any of its obligations to the Market Operator or an Approved Clearing Facility or fails to comply with any reasonable direction, decision or requirement of the Market Operator or an Approved Clearing Facility;
- (e) the Trading Participant indicates that it will or may suspend payment to the Market Operator, an Approved Clearing Facility or to creditors;
- (f) the Trading Participant is or states that it is insolvent under administration, or ceases or indicates that it will or may cease to carry on business;
- (g) the Trading Participant becomes, or the Trading Participant or any other person takes any step which might result in the Trading Participant becoming, an externally-administered body corporate or an insolvent under administration (as those terms are defined in section 9 of the Corporations Act);
- (h) any distress, execution or other process is levied or enforced or served upon or against any property of the Trading Participant;
- (i) an investigator, inspector or other officer is appointed, or an investigation directed or commenced under the Corporations Act or other legislation to investigate all or part of the affairs of the Trading Participant or a related entity, in circumstances which are, in the opinion of the Market Operator, material to the capacity of the Trading Participant to meet its obligations to other Trading Participants, the Market Operator or an Approved Clearing Facility;
- (j) the Trading Participant does not have the level of capital required (or fails to comply with any exemption);
- (k) the Trading Participant no longer satisfies the criteria for admission as a Trading Participant or fails to comply with any condition of admission as a Trading Participant;
- (l) the Trading Participant made a wilful omission or misstatement in respect of a material matter prior to, or in connection with, its application for admission as a Trading Participant;
- (m) The Trading Participant has failed to comply with any of Rules [5010] to [5013] or [5020] to [5026];
- (n) the Trading Participant has failed to comply with a determination made by an Old Tribunal (as defined in Rule [8000]) pursuant to the Old Australian Securities Exchange Disciplinary Processes and Appeals Rulebook (as defined in Rule [8000]);
- (o) the Trading Participant fails to comply with any action taken by the Market Operator in accordance with Rule [5100] 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); and
- (p) the Trading Participant is suspended, expelled or terminated as a member or participant of any Australian or overseas derivatives, securities, commodity or stock exchange or market or any clearing house or clearing and/or settlement facility or is subject to sanctions imposed by an Australian or overseas regulatory authority.

Amended 20/03/17

[5162] If an event, or series of events whether related or not, occurs in relation to a Trading Participant or a related entity of a Trading Participant, which is not an event of default under Rule [5161], including without limitation:

- (a) the Trading Participant fails to comply, or indicates that it will or may fail to comply with any of the Rules or Procedures or the terms of any agreement with the Market Operator;
- (b) the Trading Participant fails to comply, or indicates that it will or may fail to comply with any of the rules of, or the terms of any agreement with, an Approved Clearing Facility;
- (c) The Market Operator is informed by another derivatives, securities, commodity or stock exchange or market or any clearing house or clearing and/or settlement facility that the Trading Participant or a Related Body Corporate of the Trading Participant is not complying with its obligations to that exchange, market, clearing house or clearing and/or settlement facility;
- (d) the Trading Participant breaches Chapter 7 of the Corporations Act, or regulations made under that Chapter (as referred to in Corporations Regulation 7.2.07(b)(v)); or
- (e) the Trading Participant breaches a condition on its Australian financial services licence (as referred to in Corporations Regulation 7.2.07(b)(vi)),

and the Market Operator considers the event or series of events has or may have a material adverse effect on:

- (a) the capacity of the Trading Participant to meet all its obligations to the Market Operator, a related entity of the Market Operator or an Approved Clearing Facility or other Trading Participants;
- (b) the financial position of the Market Operator, an Approved Clearing Facility or the Trading Participant; or
- (c) the Market or an Underlying Market,

the Market Operator may take any or all of the actions set out in Rule [5160] in relation to the Trading Participant as if an event of default under Rule [5161] had occurred.

Amended 15/06/15, 20/03/17

[5163] If the Market Operator suspends a Trading Participant's admission as a Trading Participant under Rule [5160]:

- (a) the period of suspension will be the period that the Market Operator considers necessary or desirable. The Market Operator may extend the period of suspension if it considers an extension is necessary or desirable;
- (b) the Trading Participant must not hold itself out as a Trading Participant during a period of suspension; and

- (c) during a period of suspension, the Market Operator may, pursuant to its powers under Rule [5160](c), terminate the admission of the Trading Participant.

Amended 20/03/17

[5164] Where the Market Operator takes action (including for the avoidance of doubt, gives a direction) under Rule [5160]:

- (a) the Market Operator will, as soon as practicable, notify the Trading Participant of the action taken by the Market Operator and its reasons for taking that action;
- (b) where the action involves the cancellation of a Market Transaction under Rule [5160](a), the Market Operator will also notify the other Trading Participant which was party to that Market Transaction of that cancellation, and may include in such notification its reasons for taking that action; and
- (c) the Market Operator may, subject to Rule [5201] (in relation to termination), publish a market notice (or otherwise make an announcement or publication) detailing the action that has been taken, including the name of the Trading Participant(s) and any other information which the Market Operator considers relevant to such action.

Amended 20/03/17

[5165] Each Trading Participant irrevocably appoints severally the Market Operator, and every officer, employee, agent and other representative for the time being of the Market Operator, at the option of the Market Operator, to be the agent of the Trading Participant and irrevocably authorises the Market Operator and every officer, employee, agent and other representative for the time being of the Market Operator, at the option of the Market Operator, to do all acts and execute all documents on its behalf for the purpose of exercising the powers conferred on the Market Operator by Rule [5100].

Amended 20/03/17

[5166] Without limiting Rules [6800] to [6802], none of the Market Operator, its officers, employees, representatives, agents or contractors are liable to a Trading Participant or to any other person for 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 the Market Operator by Rule [5160].

Amended 20/03/17

[5167] Each Trading Participant indemnifies and will keep indemnified the Market Operator and its officers, employees, representatives, agents and contractors against all actions, proceedings, claims, demands, damages, costs, expenses and any other amounts against or incurred by any of the Market Operator or its officers, employees, representatives, agents or contractors arising out of or in connection with any event of default under Rule [5161], any circumstances under Rule [5162] or any action taken by, or any inaction by, any of the Market Operator or its officers, employees, representatives, agents or contractors under Rule [5160].

Amended 20/03/17

[5168] No person need enquire whether any action taken under Rule [5160] is properly or validly taken nor will a person be affected by any notice or claim that any action taken under Rule [5160] is improper or unnecessary.

[5169] Without limiting Rule [5500] or [5501], the rights, powers and remedies of the Market Operator under Rules [5160] to [5168] in relation to a Trading Participant survive the termination of the Trading Participant's admission as a Trading Participant.

Amended 20/03/17

## APPEALS

- [5200] If a Trading Participant is dissatisfied with a decision of the Market Operator to:
- (a) issue an Enforcement Notice under Section 2 of the ASX Enforcement and Appeals Rulebook, or any sanction imposed by the Enforcement Notice;
  - (b) suspend the admission of the Trading Participant under Rule [5160]; or
  - (c) terminate the admission of the Trading Participant under Rule [5160],
- it may appeal to the Appeal Tribunal in accordance with the provisions of the ASX Enforcement and Appeals Rulebook.

*Amended 20/03/17*

- [5201] The Market Operator may not implement or announce a decision to:
- (a) take enforcement action against a Trading Participant under Rule 2.5 of the ASX Enforcement and Appeals Rulebook; or
  - (b) terminate a Trading Participant's admission as a Trading Participant under Rule [5160],

before the expiry of the time for giving a notice of appeal or, if a notice of appeal is given in accordance with the ASX Enforcement and Appeals Rulebook, before the appeal is determined.

*Amended 20/03/17*

- [5202] Without limiting Rules [5160] or [5164], the Market Operator may implement and announce a decision to suspend the admission of a Trading Participant under Rule [5160], before the expiry of the time for giving a notice of appeal or before the appeal is determined.

*Amended 20/03/17*

## SANCTIONS AGAINST TRADING PARTICIPANTS WHO ARE PARTNERSHIPS

[5300] The Market Operator may take any action under this Section 5 against a Trading Participant which is a partnership in the name of the Trading Participant without taking action against each partner in the partnership. Where the Trading Participant is considered pursuant to this Section 5 to have contravened the Rules each partner is jointly and severally liable to pay any penalty imposed and any other sum directed to be paid to the Market Operator and to ensure that any other sanction imposed by the Market Operator (or any Appeal Tribunal) is enforced and implemented.

Amended 20/03/17



## EFFECT OF TERMINATION ON OBLIGATIONS OF TRADING PARTICIPANTS

[5500] Where a Trading Participant ceases to be a Trading Participant (including as a result of resignation or termination of the admission of the Trading Participant) this does not affect any accrued rights which the Market Operator, a Related Body Corporate of the Market Operator or other Trading Participants have against the Trading Participant or any accrued obligations which the Trading Participant has to the Market Operator, a Related Body Corporate of the Market Operator or to other Trading Participants.

*Amended 20/03/17*

[5501] Without limiting Rule [5500], after the Trading Participant ceases to be a Trading Participant under these Rules:

- (a) the Rules continue to apply and the Market Operator will continue to have jurisdiction in respect of the Trading Participant concerning any conduct or any failure to comply with the Rules which occurred before the cessation of the admission of the Trading Participant, whether that conduct or failure was by the Trading Participant or by any other person for whose conduct the Trading Participant was responsible;
- (b) the Trading Participant continues to be bound by any indemnity given by the Trading Participant under these Rules; and
- (c) other Rules continue to apply in respect of the Trading Participant to the extent required to give effect to paragraphs (a) and (b).

*Amended 20/03/17*

**End of Section. Next page is no. 601.**