

SUSPENSION AND TERMINATION OF PARTICIPANTS

<p>The purpose of this Guidance Note</p>	<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 Clear (Futures) facility
<p>The main points it covers</p>	<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 Appealing a suspension or termination
<p>Related materials you should read</p>	<ul style="list-style-type: none"> ASX Clear (Futures) Operating Rules Guidance Note 2 <i>Resigning a Participation</i>

History: Guidance Note 5 introduced 31/03/17.

Important notice: ASX has published this Guidance Note to assist participants to understand and comply with their obligations under the ASX Clear (Futures) Operating Rules. It sets out ASX's interpretation of the ASX Clear (Futures) 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 Clear (Futures) 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 Clear (Futures) Pty Limited (ASX) approaches the suspension or termination of a participant's admission to the ASX Clear (Futures) facility.¹

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

A participant commits an event of default if:²

- it fails to meet any of its obligations under open contracts or the rules or any agreement or understanding entered into with ASX or fails to comply with any reasonable directions of ASX;
- it fails to pay:
 - initial margins or variation margins or daily settlement amounts or intra-day margins or extra margins within the period provided by the ASX Clear (Futures) Operating Rules; or
 - any other amount or amounts in total exceeding A\$1,000 which is due and payable to ASX;
- an administrator or similar person is appointed to the participant or a related body corporate of the participant;
- except for the purposes of a solvent reconstruction or amalgamation previously notified to ASX,
 - an application or an order is made, proceedings are commenced, a resolution is passed or proposed in a notice of meeting or an application to a court or other steps are taken for:
 - the winding up, dissolution or official management or administration of the participant or a related body corporate of the participant; or
 - the participant or a related body corporate of the participant enters into any arrangement, compromise or composition with or assignment for the benefit of its creditors or any class of them;
 - the participant ceases or suspends, or threatens to cease or suspend, substantially all of its business or threatens to dispose of substantially all of its assets;
 - the participant is, or is deemed under any applicable legislation to be, unable to pay its debts as and when they fall due (other than as a result of failure to pay a debt or claim the subject of a good faith dispute) or stops or suspends or threatens to stop or suspend payment of all or a class of its debts;

¹ OTC participants should also refer to Part 6 'Default' in the ASX OTC Rulebook and ASX OTC Handbook, which supplements the suspension and termination powers that ASX has under the ASX Clear (Futures) Operating Rules.

² ASX Clear (Futures) Operating Rule 71.3.

- it is suspended, expelled or terminated as a member of any Australian or overseas, futures, securities, commodity or stock exchange or is subject to sanctions by any Australian or overseas regulatory authority;³
- it fails to comply with any determination resulting from enforcement action taken against it by ASX;⁴
- with respect to all or any of the assets and undertaking of the participant or a related body corporate of the participant:
 - a receiver, receiver and manager, administrative receiver, administrator or similar officer is appointed;
 - a security interest is enforced; or
 - a distress, attachment, or other execution is levied or enforced;
- an investigator, inspector or other officer is appointed or an investigation is directed or commenced under the Corporations Act 2001 (Cth) or any other legislation to investigate all or any part of the affairs of the participant or a related company of the participant, in circumstances which are material to its capacity to meet its obligations to ASX;
- anything analogous to anything referred to above, or having substantially similar effect, occurs with respect to the participant;⁵
- it is the subject of a notice under any insurance⁶ or any other insurance taken out by ASX to enable it to meet its obligations to participants which affects the amount or conditions or operation of such insurance;
- there is an event deemed or described as a default by the ASX 24 Operating Rules or as otherwise provided in the ASX Clear (Futures) Operating Rules, including a failure to comply with the requirements of those rules in relation to position limits;
- it acts fraudulently or in a misleading or deceptive manner with respect to any open contract or market contract the registration of which gave rise to an open contract;
- it fails to comply, or indicates that it will or may fail to comply, with any of the ASX Clear (Futures) Operating Rules or Procedures or the terms of any agreement with ASX; or
- any other event or series of events, whether related or not, occurs (or appears likely to occur) which in the opinion of ASX has (or appears likely to have) a material effect on the capacity of the participant to meet its obligations to ASX.

If a participant commits an event of default, it may be declared by ASX to be in default under the ASX Clear (Futures) Operating Rules.⁷

If it is declared to be in default, ASX may in its absolute discretion terminate its rights and status as a participant.⁸ ASX may also take a wide variety of other specific actions in response to the default.⁹

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

⁴ This includes enforcement action under ASX Clear (Futures) Operating Rule 9A.2(f) and the ASX Enforcement and Appeals Rulebook or under the Old Australian Securities Exchange Enforcement and Appeals Rulebook (as defined in ASX Clear (Futures) Operating Rule 12B).

⁵ Including, without limitation, anything occurring outside Australia or under the law of a jurisdiction other than Australia.

⁶ As referred to in ASX Clear (Futures) Operating Rule 7.1(e).

⁷ ASX Clear (Futures) Operating Rule 71.1(b).

⁸ ASX Clear (Futures) Operating Rules 72.1(i).

⁹ See ASX Clear (Futures) Operating Rule 72.1.

A participant is automatically suspended from the ASX Clear (Futures) facility if:

- it is declared by ASX to be in default;¹⁰
- it is in breach of the net tangible assets, net liquid assets or its monthly reporting requirements in ASX Clear (Futures) Operating Rule 8 and it fails to rectify that breach within 24 hours or such longer period as ASX in its absolute discretion may allow;¹¹
- a liquidator, receiver, receiver and manager or administrator or some other form of external management is appointed in respect of the property of the participant, or the participant or a partner of the participant becomes bankrupt.¹²
- it fails to pay its annual fee within one month of the due date or such later date as ASX may allow;¹³ or
- ASX has not received an undertaking¹⁴ from the participant to be bound by the ASX Clear (Futures) Operating Rules.¹⁵

Where a participant's status and rights have been suspended or terminated, the open positions or open contracts held by the participant (whether on its own behalf or on behalf of clients) may be transferred to another participant at ASX's direction.¹⁶

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

A participant must immediately notify ASX if an event of default occurs or if the participant has reasonable grounds to suspect that an event of default may occur.¹⁷

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.¹⁸

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 after completion of the settlement cycle on each trading 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.

¹⁰ ASX Clear (Futures) Operating Rule 10.11(a).

¹¹ ASX Clear (Futures) Operating Rule 10.11(b).

¹² ASX Clear (Futures) Operating Rule 10.11(c). In this case, unless ASX in its absolute discretion approves otherwise, the suspension continues for the duration of the liquidation or receivership, administration, bankruptcy or external management.

¹³ ASX Clear (Futures) Operating Rule 3.2.2(b). In this case, the suspension lasts until the annual fee is paid together with interest.

¹⁴ Required under ASX Clear (Futures) Operating Rule 4.11(c).

¹⁵ ASX Clear (Futures) Operating Rule 4.11(d). In this case, the suspension lasts until the signed undertaking is received by ASX.

¹⁶ The transfer powers can also be exercised where the participant has been ordered not to trade on a specified market or markets. The transfer can be effected under any power of attorney given by the client to ASX (for example, in their client agreement under ASX Clear (Futures) Operating Rule 4.14(j)(vi)) or by operation of the agency created by ASX Clear (Futures) Operating Rule 10.9: ASX Clear (Futures) Operating Rules Schedule 13 paragraph 15. See also ASX Clear (Futures) Operating Rule 121.

¹⁷ ASX Clear (Futures) Operating Rule 71.1(a).

¹⁸ This applies whether the participant notified ASX of those circumstances or ASX became aware of those circumstances from another source.

Depending on the circumstances, ASX may establish a Participant Incident Response Committee or Default Management Committee 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 suspend or terminate the admission of, or take other action in relation to, the participant.

ASX may at any time impose conditions on a participant's admission that ASX considers appropriate.¹⁹

Restrictions or conditions that could be applied by ASX in these circumstances include:

- that the participant not provide, or enter into any agreement to provide, clearing services to a new client;
- if the participant clears for itself, that the participant:
 - not enter into any new market contracts on house account or for any or certain specified clients;
 - not enter into particular types of market contracts on house account or for any or certain specified clients;
 - only enters into new market contracts on house account or for any or certain specified clients as necessary to close out existing positions; or
 - only enters into particular types of market contracts on house account or for any or certain specified clients as necessary to close out existing positions;
- if the participant clears for other participants, that the participant:
 - not accept any new clearing obligations for some or all of those other participants;
 - not accept any new clearing obligations for some or all of those other participants in relation to particular types of market contracts;
 - only accepts new clearing obligations for some or all of those other participants as necessary to close out existing positions; or
 - only accepts new clearing obligations for some or all of those other participants in relation to particular types of market contracts as necessary to close out existing positions;
- that the participant's initial, variation or total margin obligations must not exceed a nominated limit;
- that the participant restricts its business activities (including its non-ASX activities) in some other specified manner;
- that the participant provide to ASX information or reports on specified matters and at specified times; and
- that the participant provide a solvency certificate on a specified basis to ASX signed by all or a given number of its directors.

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.²⁰ It will also usually publish a market notice naming the participant and detailing the action that has been taken.

¹⁹ ASX Clear (Futures) Operating Rule 4.5. ASX must notify the participant of any condition imposed in writing.

²⁰ A termination of the rights and status of a participant in default is not effective unless ASX has given notice of termination in writing to the participant: ASX Clear (Futures) Operating Rule 72.1A(a)(1). Initial communication of ASX's decision will frequently be made by telephone and then followed up with a formal written notice.

ASX will notify each relevant approved market operator for which the participant clears of the suspension or termination of the participant as soon as practicable after ASX's decision. Depending on the circumstances, ASX may also notify ASIC and the Reserve Bank of Australia of the suspension or termination.

6. The effect of a suspension or termination

The suspension or termination of a participant does not affect any subsisting rights which ASX may have in respect of that participant or its CPM clients,²¹ or any subsisting obligations of the participant or its CPM clients to ASX, under the ASX Clear (Futures) Operating Rules.²² A suspension also does not affect any continuing obligations of the participant or its CPM clients under those rules.²³

The rights, powers and remedies of ASX under the indemnity in ASX Clear (Futures) Operating Rule 75.1 in relation to a participant survive its termination or suspension as a participant or the termination of its authorisation to clear a category or categories of market contract.²⁴

A suspended participant is not²⁵ entitled to have market contracts registered in its name or to receive an allocation or transfer of an open contract and is not entitled to vote.²⁶

7. Appealing a suspension or termination

A participant who is dissatisfied with a decision by ASX to suspend or terminate its admission under the provisions of the ASX Clear (Futures) Operating Rules mentioned previously is not entitled to appeal that decision. It can only appeal a decision to impose a suspension or termination pursuant to an Enforcement Notice under section 2 of the ASX Enforcement and Appeals Rulebook or a decision to impose a condition under ASX Clear (Futures) Operating Rule 4.5.²⁷

²¹ That is, clients to whom the client protection model provisions in Part 10 of the ASX Clear (Futures) Operating Rules apply.

²² ASX Clear (Futures) Operating Rule 10.12.

²³ ASX Clear (Futures) Operating Rule 10.12.

²⁴ ASX Clear (Futures) Operating Rule 75.1, second paragraph.

²⁵ Except to the extent allowed by ASX in its absolute discretion.

²⁶ ASX Clear (Futures) Operating Rule 10.13.

²⁷ See Rule 3.1.6(a) and (b) of the ASX Enforcement and Appeals Rulebook. If a participant wishes to appeal such a decision, it 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 receipt of notification of ASX's decision: see Rules 3.1.6(a) and (b) of the ASX Enforcement and Appeals Rulebook and the accompanying Procedures. Further information about the appeal process can be found in Guidance Note 1 to the ASX Enforcement and Appeals Rulebook.