



ASX CLEAR (FUTURES) OPERATING RULES

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PART 9 MISCELLANEOUS PROVISIONS

90 Introduction

90.1 This Part of the Rules contains provisions of a miscellaneous nature not dealt with in the preceding parts.

91 [Deleted]

92 Governing Law and Submission to Jurisdiction

92.1 These Rules are governed by, and will be interpreted in accordance with, the laws in force in NSW.

Amended 11/02/14

Submission to Jurisdiction

92.2 ASX Clear (Futures), each Clearing Participant, each OTC Affiliate and each CPM Client:

- (a) irrevocably submit to the exclusive jurisdiction of the courts exercising jurisdiction in New South Wales;
- (b) irrevocably waive any immunity from or any objection to any action in the courts exercising any jurisdiction in New South Wales; and
- (c) irrevocably waive any claim that they may have that any action brought in New South Wales has been brought in an inconvenient forum or that the courts of New South Wales do not have jurisdiction.

Amended 11/02/14, 15/08/16

92.3 Notwithstanding Rules 92.1 and 92.2 the law of an Open Contract arising from a Market Contract traded on the Exchange shall be the law of New South Wales and the Courts having exclusive jurisdiction will be those of NSW, Australia and the law of an Open Contract arising from a Market Contract traded on NZFOE shall be the law of New Zealand and the Courts having exclusive jurisdiction will be those of New Zealand.

Amended 11/02/14

93 Rights, Obligations and Powers of ASX Clear (Futures)

93.1 Any right, entitlement, relief, obligation or power of ASX Clear (Futures) arising pursuant to the Rules shall be a right, entitlement, relief, obligation or power as the case may be of ASX Clear (Futures).

93.2 Any power or function which under these Rules may be exercised or performed by ASX Clear (Futures) may be exercised or performed by the Board, Managing Director or other duly authorised officer or delegate of ASX Clear (Futures).

93.3 No power conferred on ASX Clear (Futures) by these Rules including without limitation any power to Close Out, Transfer or call Initial Margin, Daily Settlement Amounts, Variation margins, Intra Day Margins or Extra Margins, Exercise or Abandon any Option Contract, or realise any security shall impose any duty on the Board or ASX Clear (Futures) to exercise such powers or to exercise such powers in a particular way, and no person shall have any claim against ASX Clear (Futures) in

relation to any decision made bona fide to exercise or refrain from exercising such powers.

Amended 28/10/02

- 93.4 Where ASX Clear (Futures) is under the terms of an Open Contract obliged to perform an obligation by a particular time it shall be sufficient performance by ASX Clear (Futures) if it performs that obligation promptly after that time.
- 93.5 Any reference in the Exchange Operating Rules to the obligations of the Buyer and Seller of a Market Contract shall in relation to an Open Contract arising upon the registration of a Market Contract:
- (a) be read as a reference to ASX Clear (Futures) as a party to an Open Contract where appropriate;
 - (b) in relation to an obligation of the Buyer and Seller to satisfy requirements of or do things in relation to ASX Clear (Futures) be read as relating to the obligations of Buyers and Sellers under Open Contracts other than ASX Clear (Futures); and
 - (c) be otherwise read in conjunction with these Rules.
- 93.6 Any provision of these Rules which is prohibited or unenforceable in any jurisdiction will be ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That will not invalidate the remaining provisions of these Rules nor affect the validity or enforceability of that provision in any other jurisdiction.
- 93.7 No failure to exercise and no delay in exercising any right, power or remedy under any Rule operates as a waiver. Nor does any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.
- 93.8 The rights, powers and remedies provided to ASX Clear (Futures) under these Rules are cumulative and not exclusive of any rights, powers or remedies provided by law.

94 Limit on Obligations of ASX Clear (Futures)

- 94.1 The obligations of ASX Clear (Futures) under these Rules shall not extend to the performance by Clearing Participants of obligations arising other than under Open Contracts and these Rules (whether relating to the payment of commissions or otherwise) whether or not ASX Clear (Futures) provides facilities with respect to the fulfilment of such obligations.
- 94.2 ASX Clear (Futures) in performance of its obligations is entitled to rely upon the accuracy of information provided by the Exchange and its systems and shall not be liable with respect to any loss suffered as a result of any incorrect information provided to ASX Clear (Futures) or breakdown of Exchange systems.
- 94.3 (a) Neither ASX Clear (Futures) nor the Exchange nor the developer of any trading system or of any computer system ("Clearing Systems") utilised by ASX Clear (Futures) in connection with the business of ASX Clear (Futures) will accept or bear any liability whatsoever in respect of the operation of any Clearing System or otherwise, whether for any breach of a provision of any relevant legislation, any act or omission (whether negligent or not), injury, death, damage to physical property, any direct or indirect losses including but not limited to lost profits, loss of files, loss of contracts, loss of data or use of data (including any error in information supplied or

made available), loss of operation time or loss of equipment or process, economic loss, loss of reputation or losses or damages incidental or consequential to the installation, use or operation of any Clearing System. All warranties and conditions, both express and implied as to the condition, description, quality, performance, durability or fitness for purpose or otherwise of the Clearing Systems or any component thereof are excluded except as required by law; and neither ASX Clear (Futures) nor the Exchange warrants or forecasts that the Clearing Systems or any component thereof or any services performed in respect thereof will meet the requirements of any user, or that operation of the Clearing Systems will be uninterrupted or error-free, or that any services performed in respect of the Clearing Systems will be uninterrupted or error-free. Nothing in this Rule 94.3 shall limit any liability of a developer of any Clearing System to ASX Clear (Futures).

- (b) ASX Clear (Futures) will not accept or bear any liability whatsoever in respect of any act done or omitted, in good faith and in the performance or purported performance of a function or power conferred on it by the Corporations Act or by any other legislative instrument or direction of any legislature or government authority having jurisdiction over it. [94.3(b) is effective from 17/01/05].

94.4 Every exemption from liability, defence or immunity applicable to ASX Clear (Futures) or to which ASX Clear (Futures) is entitled under Rule 94.3 shall also be available and shall extend to protect every one of ASX Clear (Futures)'s officers, agents or employees, and for the purposes of Rule 94.3(a), the Exchange and any developer of any Clearing Systems shall be deemed to have been acting as and to be agents of and for the benefit of all persons who are or might be its agents or employees from time to time, as well as on its own behalf.

94.5 Where the *Competition and Consumer Act 2010* (Cth) or the Commerce Act of New Zealand or any similar State or Territorial legislation implies in this Agreement any term, condition or warranty, and makes void or prohibits application of or exercise of, or liability under such term, condition or warranty, such term, condition or warranty shall be deemed to be included herein. Provided that, the liability of ASX Clear (Futures) or the Exchange for any breach of such term, condition or warranty shall be limited, at the option of ASX Clear (Futures) or the Exchange, to any one or more of the following:

- (a) If the breach relates to goods:
- (i) the replacement of the goods or the supply of equivalent or similar goods;
 - (ii) the repair of the goods;
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (iv) the payment of the cost of having the goods repaired.
- (b) If the breach related to services:
- (i) the supplying of the services again; or
 - (ii) the payment of the cost of having the services supplied again.

Amended 01/10/15

95 Prescriptions and Schedules

- 95.1 The Board may Prescribe and set out in the Schedules any matters incidental to the Rules or as otherwise provided in the Rules. In the event of any inconsistency between the Rules and the Schedules, the Rules shall prevail. Any Prescription by the Board shall not depend for its effectiveness on it being set out in the Schedules and any such Prescription shall have full effect notwithstanding any delay or failure in so setting it out and such setting out shall be for the purposes of record only. The Board may otherwise Prescribe matters without setting out in the Schedules where otherwise authorised to Prescribe by the Rules. Any prescription made for the purposes of the Definition of Net Tangible Assets, Net Liquid Assets or Financial Requirements or Rule 54.1 shall for the purposes of Chapter 7 of the Corporations Act be deemed to be an amendment to the Rules.

96 Notification to the Exchange

- 96.1 ASX Clear (Futures) shall promptly notify the Exchange and the Relevant Exchange where it exercises any powers where expressly so provided in the Rules or where the relevant power is listed in the Schedules for the purpose of this provision.

97 ASX Clear (Futures) Reports

- 97.1 ASX Clear (Futures) shall issue to Clearing Participants a daily registration statement in the form prescribed in the Schedules and shall provide such other statements as to Open Positions of the Clearing Participant and/or financial dealings between the Clearing Participant and ASX Clear (Futures) as is prescribed in the Schedules.
- 97.2 To the extent that the Client Protection Model Provisions apply to a Client, ASX Clear (Futures) shall provide the relevant Clearing Participant and:
- (a) each CPM Client for whom ASX Clear (Futures) maintains an Individual Sub Account within a Clearing Participant's Client Clearing Account; or
 - (b) if a Nominated Person has been notified to ASX Clear (Futures) in relation to that Individual Sub-Account, such Nominated Person,
- with such statements as to Open Positions of the CPM Client or other reports as is prescribed in the Schedules.

Introduced 11/02/14

98 Minor Fines – [Deleted]

Deleted 31/03/08

99 Conversion of Currency

- 99.1 Subject to Rule 99.2 any liability to or by ASX Clear (Futures) payable in any currency or amount standing to the credit of a Clearing Participant in any currency shall if required to be paid to or by ASX Clear (Futures) in another currency in accordance with ASX Clear (Futures) Rules or Exchange Operating Rules or a determination of the Board be converted at a rate in that currency determined by ASX Clear (Futures) from time to time.
- 99.2 For the purposes of any set-off, combination or consolidation of, or in relation to, any accounts or any amounts standing to the credit of any accounts, or of performing any calculation or determination contemplated by these Rules (including without

limitation any determination necessary to give effect to Rules 72 or 73) or by Exchange Operating Rules, unless ASX Clear (Futures) otherwise determines all amounts which are not Australian dollar amounts shall be converted to Australian dollars at such rate as determined by ASX Clear (Futures) for the day at which the conversion is made.

100 [Not in use]

101 Taxes and Charges

101.1 All taxes, charges, stamp duty or any other government or statutory charges payable with respect to Open Contracts or the registration of Market Contracts or monies deposited by a Clearing Participant with ASX Clear (Futures) shall be the sole responsibility of Clearing Participants and Clearing Participants shall indemnify ASX Clear (Futures) with respect to any such taxes or charges and any taxes, charges or stamp duty referable to the registration of Market Contracts in the name of the Clearing Participant or Open Contracts of the Clearing Participant or monies paid to or from the Clearing Participant or deposited by the Clearing Participant may be debited to any account held by the Clearing Participant with ASX Clear (Futures).

101.2 If a law requires ASX Clear (Futures) to withhold or deduct an amount in respect of taxes, levies, imposts, charges or duties (including stamp and transaction duties) imposed by any authority from a payment to a Clearing Participant, CPM Client or a Nominated Person, ASX Clear (Futures) will withhold or deduct the amount. ASX Clear (Futures) is not liable to pay any additional amount to the Clearing Participant, CPM Client or Nominated Person in respect of any such withholding or deduction.

Introduced 11/02/14

102 Compulsory Settlement – [Deleted]

Introduced 01/07/13 Deleted 01/10/15

103 Manner and Form of Settlement

103.1 Notwithstanding any provision in Exchange Operating Rules or in Open Contracts monies, securities, property, collateral or Commodity required to be paid or delivered to ASX Clear (Futures) or paid to or delivered by ASX Clear (Futures) shall be paid and delivered in such manner and form as is required or determined by ASX Clear (Futures).

103.2 All payments or deliveries of monies, securities, property, collateral or Commodity to or by ASX Clear (Futures) on a Business Day are final and irrevocable when made in accordance with the Rules and Procedures.

Introduced 11/02/14

104 Directions and Requirements of ASX Clear (Futures) and Exchange

104.1 Each Clearing Participant, OTC Affiliate and CPM Client shall comply with the Rules and any Prescriptions pursuant to the Rules and with all requests directions or requirements of ASX Clear (Futures) or the Exchange or a Related Exchange made pursuant to their powers under the Rules or the Exchange Operating Rules or which are reasonably ancillary to or incidental to such powers.

Amended 11/02/14, 15/08/16

105 Appointment of Agents

A Clearing Participant which does not have a place of business in a place where ASX Clear (Futures) carries on business may if approved by ASX Clear (Futures) and shall, if required by ASX Clear (Futures) appoint an agent approved by ASX Clear (Futures) in a manner approved by ASX Clear (Futures) to perform on behalf of the Clearing Participant the obligations of the Clearing Participant under the Rules in that place.

Where ASX Clear (Futures) has required a Clearing Participant to appoint an agent ASX Clear (Futures) may, until arrangements approved by ASX Clear (Futures) for the appointment of an agent are in place, refuse to register in the name of the Clearing Participant Market Contracts traded on a Relevant Exchange following advice to the market of that Relevant Exchange of such refusal by ASX Clear (Futures).

106 Goods and Services Tax

For the purposes of the Goods and Services Tax (GST), ASX Clear (Futures) is authorised to issue Recipient Created Tax Invoices (RCTIs) in any situation which satisfies the requirements of the GST legislation, GST Regulations or Tax Office Rulings. These requirements include the creation of a written agreement between ASX Clear (Futures), as an entity issuing the RCTI and the supplier on whose behalf it is issued. This Rule puts in place the required agreement between ASX Clear (Futures) and each Clearing Participant:

- ASX Clear (Futures) is authorised to issue RCTIs to Clearing Participants;
- a Clearing Participant will not issue a tax invoice in circumstances where ASX Clear (Futures) issues an RCTI on behalf of that Clearing Participant;
- a Clearing Participant on whose behalf an RCTI is issued acknowledges that it is registered for GST purposes and will notify ASX Clear (Futures) if it ceases to be registered;
- ASX Clear (Futures) acknowledges that it is registered for GST purposes and will notify the Clearing Participant if it ceases to be registered; and
- ASX Clear (Futures) indemnifies the Clearing Participant for any liability for GST and penalty arising from an understatement of the GST payable on any supply for which ASX Clear (Futures) issues an RCTI.

107 Recording of Information by ASX Clear (Futures)

- (i) ASX Clear (Futures) shall be entitled to record all conversations conducted on its telecommunications equipment.
- (ii) Disclosure to any other person of information obtained by ASX Clear (Futures) pursuant to this Rule 107 shall be subject to the consent of the Clearing Participant.

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