

NOTIFICATION OBLIGATIONS

<p>The purpose of this Guidance Note</p>	<ul style="list-style-type: none"> To provide guidance to participants on their notification obligations under the ASX Clear Operating Rules
<p>The main points it covers</p>	<ul style="list-style-type: none"> General notification obligations under the ASX Clear Operating Rules Notification of significant breaches Lodging notifications via ASX Online Capital-related notifications
<p>Related materials you should read</p>	<ul style="list-style-type: none"> A list of the notifications that can be submitted to ASX via the participant forms facility on ASX Online and the relevant notification name: https://www.asxonline.com/content/dam/asxonline/public/documents/manuals/participant-notifications.pdf Instructions on how to use the participant forms facility on ASX Online: https://asxonline.com/content/dam/asxonline/public/documents/manuals/participant-forms-guide.pdf ASX Return Lodgement and Monitoring System user guide: www.asxonline.com/content/dam/asxonline/public/documents/manuals/rlm-system-user-guide/rlm-system-user-guide.pdf

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Important notice: ASX has published this Guidance Note to assist participants to understand and comply with their obligations under the ASX Clear Operating Rules. It sets out ASX's interpretation of the ASX Clear 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 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

The purpose of this Guidance Note is to provide guidance to participants on their notification obligations under the ASX Clear Operating Rules.

2. General notification obligations

Under the ASX Clear Operating Rules, a participant is required to notify ASX Clear Pty Limited (ASX) of the following matters:

- **change of name** – any change to its name or the name under which it carries on business as a participant, before the change becomes effective;¹
- **change of address** – any change to any address at which the participant carries on business as a participant, before the change becomes effective;²
- **change of director** – the appointment, resignation or removal of a director within 10 business days of the change;³
- **change of controller** – a person who is not a controller becomes a controller or a person who is a controller ceases to be a controller, immediately upon that happening;⁴
- **change of licence** – any change to a licence or other authorisation affecting its activities as a participant, immediately upon that happening;⁵
- **information about other changes in business** – any other material change in information concerning its business as a participant from that previously provided to ASX, immediately upon that happening;⁶
- **group structure chart** – if the participant is not an ADI, a copy of the participant's group structure chart as at 30 June each year by 31 July that year;⁷

¹ ASX Clear Operating Rule 4.7.1(a).

² ASX Clear Operating Rule 4.7.1(b).

³ ASX Clear Operating Rule 4.7.1(c).

⁴ ASX Clear Operating Rule 4.7.1(d)(i).

⁵ ASX Clear Operating Rule 4.7.1(d)(ii).

⁶ ASX Clear Operating Rule 4.7.1(d)(iii).

⁷ ASX Clear Operating Rule 4.7.2. This is to be submitted via email to compliance@asx.com.au (ASX Clear Operating Rules Procedure 4.7.2). Note, if the participant's group structure chart has not changed from the last version provided to ASX, the participant may satisfy this obligation by referring to the date on which that last version was provided to ASX and stating that its group structure chart provided to ASX on that date has not changed.

- **change of auditor** – the appointment, removal or resignation of an auditor, within 10 business days of the event;⁸
- **significant audit issue in ASIC Form FS71** – an auditor identifies a significant issue in an ASIC Form FS71 or equivalent report lodged with ASIC pursuant to section 989B(3) of the Corporations Act 2001 (Cth),⁹ immediately upon the report being lodged with ASIC;¹⁰
- **reconciliation issues with a client trust account or client segregated account** – within 2 business days if:
 - a reconciliation of a client trust account or client segregated account has not been performed in accordance with the ASX Clear Operating Rules;
 - a reconciliation of a client trust account reveals a deficiency of client funds;
 - a reconciliation of a client segregated account reveals that “Total Deposits” are less than “Total Third Party Client Monies”; or
 - the participant is unable to reconcile a client trust account;¹¹
- **overseas activity** – the participant intending to locate or relocate any part of its business as a participant¹² or personnel engaged in its business as a participant outside Australia, prior to the commencement of the overseas activity;¹³
- **overseas taxes** – if the participant is incorporated outside Australia or conducts any part of its business as a participant outside Australia and that may have tax ramifications for ASX or any other person bound by the ASX Clear Operating Rules in relation to any transaction or agreement involving the participant, information about those tax ramifications, before the relevant transaction or agreement is entered into;¹⁴
- **appointment or cessation of agent for service of process** – where the participant is not incorporated or registered as a foreign company under the Corporations Act:
 - the acceptance by an agent of its appointment as the participant’s agent for service of process in Australia as soon as practicable after the acceptance;¹⁵ and
 - the intended effective date of any agent ceasing for any reason to act as the participant’s agent for service of process in Australia;¹⁶
- **notification to insurers** – any notification to its professional indemnity (or equivalent) insurer of any claim, potential claim or circumstances that might give rise to a claim that relates in any way to its activities as a participant, immediately upon giving the notification;¹⁷
- **legal proceedings** – the participant commences legal proceedings against, or has legal proceedings commenced against it by, another participant, a market participant, a settlement participant, an approved market operator, ASIC or other regulatory authority or a client in connection with its role as a participant and

⁸ ASX Clear Operating Rule 4.5.3.

⁹ Referred to in this Guidance Note as the “Corporations Act”.

¹⁰ ASX Clear Operating Rule 4.5.4.

¹¹ ASX Clear Operating Rule 4.23.7.

¹² Including, without limitation, any gateway or other means of communicating clearing messages to ASX or any employees.

¹³ ASX Clear Operating Rule 4.19.1 and ASX Clear Operating Rules Procedure 4.19.1 paragraph (a).

¹⁴ ASX Clear Operating Rule 4.19.2.

¹⁵ ASX Clear Operating Rule 4.19.5(b). The agent must be resident in Australia and approved by ASX (ASX Clear Operating Rules 4.19.5(a) and (d)).

¹⁶ ASX Clear Operating Rule 4.19.5(c).

¹⁷ ASX Clear Operating Rule 4.3.1(c).

those legal proceedings may affect the operations of ASX or the interpretation of the ASX Clear Operating Rules, immediately upon commencing or becoming aware of the proceedings;¹⁸

- **notification of regulatory action against the participant or an employee** – the participant is informed by ASIC or its delegate (or any other person authorised under the Corporations Act), an exchange, a market operator, a clearing and settlement facility or a regulatory body that action is being or may be taken against the participant or any of its employees that relates in any way to its activities as a participant, on or before the next business day of the participant being so informed;¹⁹
- **significant rule breach** – the participant becomes aware of having committed a significant breach of the ASX Clear Operating Rules or Procedures, immediately upon becoming aware of the breach;²⁰
- **event of default** – any circumstances occur which constitute an event of default under rule 15.1 or an event referred to in rule 15.3.1(a) or (d), immediately upon that occurring;²¹
- **insolvency**– the participant becomes aware or has reasonable grounds for suspecting the existence of any event or circumstance which adversely affects, or may adversely affect, its financial position or solvency immediately upon becoming so aware;²²
- **inability to comply with rules** – the participant becomes aware or has reasonable grounds for suspecting the existence of any event or circumstance which adversely affects, or may adversely affect, its ability to comply with the ASX Clear Operating Rules or Procedures, immediately upon becoming so aware;²³
- **fraud or unprofessional conduct by an employee** – the participant suspects or becomes aware that any employee has engaged in fraudulent conduct or other conduct which might constitute unprofessional conduct, immediately upon that occurring;²⁴
- **communication issues** – the participant becomes aware of any fact or matter or intends to take any action that will or may affect its capacity to communicate reliably with CHES or the Derivatives Clearing System including (without limitation) any change to its interface with CHES or the Derivatives Clearing System, as soon as reasonably practicable after becoming so aware;²⁵
- **ceasing clearing a category of market transaction** – the participant intends to cease clearing a category of market transaction or market transactions effected through a particular approved market operator, at least 20 business days before the intended date of cessation;²⁶ and

¹⁸ ASX Clear Operating Rule 4.13.1.

¹⁹ ASX Clear Operating Rule 4.7.1(e). Note that the reference in this rule to action that “may be taken” against a participant or any of its employees means that the notification obligation arises even before the formal commencement or conclusion of enforcement proceedings. For example, a participant should notify ASX if it becomes aware that a matter relating in any way to its activities as a participant of ASX Clear has been referred to the enforcement division of ASIC, an exchange, a market operator, a clearing and settlement facility or any other regulatory body for consideration of enforcement or other action.

²⁰ ASX Clear Operating Rule 19.1A.1(a). See also ‘3 Significant breaches’ on page 5.

²¹ ASX Clear Operating Rule 19.1A.1(b). This includes where the participant becomes, the participant or any other person takes any step which might result in the participant becoming, or the participant reasonably suspects that it may become an externally-administered body corporate as defined in Section 9 of the Corporations Act – ASX Clear Operating Rule 15.1.1(h).

²² ASX Clear Operating Rule 19.1A.1(d).

²³ ASX Clear Operating Rule 19.1A.1(d). By way of example, this would include notifying ASX if the participant became aware of any event or circumstance that would lead to the participant being unable, or likely to be unable, to meet its margin or other financial obligations to ASX under the ASX Clear Operating Rules. It would also include the participant becoming aware of the likelihood of an external administrator being appointed to the participant or its assets.

²⁴ ASX Clear Operating Rule 19.1A.1(c).

²⁵ ASX Clear Operating Rule 4.7.1(f) and Procedure 4.7.1.

²⁶ ASX Clear Operating Rule 3.10.1.

- **incomplete, inaccurate or misleading information** – the participant becomes aware that information which it or its employees have previously given to ASX was incomplete, inaccurate or misleading, promptly upon becoming so aware.²⁷

Where an ASX Clear participant is also a participant in another market or clearing and settlement facility operated by ASX or a related body corporate of ASX and the notice being provided relates to both participations, a notice given to ASX or a related body corporate of ASX in accordance with the operating rules of that other market or facility is taken to be given to ASX in accordance with the ASX Clear Operating Rules.²⁸

3. Significant breaches

As mentioned above, a participant is required to notify ASX immediately if it becomes aware of having committed a significant breach of the ASX Clear Operating Rules or Procedures.²⁹ For the purposes of determining whether a breach is “significant”, a participant must have regard to:

- (a) the number or frequency of similar breaches;
- (b) the impact of the breach on the participant’s ability to comply with any other Rule or Procedure or to conduct its business operations;
- (c) the extent to which the breach indicates that a participant’s arrangements to ensure compliance with the Rules and Procedures is inadequate;
- (d) the actual or potential financial loss to clients of the participant, or the participant itself, arising from the breach; and
- (e) any other matters specified by ASX from time to time.³⁰

For these purposes, it is irrelevant that the breach may have been caused by a third party (such as a payment provider).

A participant is required to make an objective assessment of the significance of each and every breach (or a series of related breaches) in terms of determining whether it requires notification to ASX under these requirements. In making this determination, participants may find the guidance provided by ASIC in Regulatory Guide 78 *Breach reporting by AFS licensees* on the corresponding obligation to notify ASIC of significant breaches of various financial services laws³¹ helpful.

For the avoidance of doubt, a one-off or infrequent breach may still be significant if it meets some or all of the criteria in (b) – (e) above.

4. Additional notification obligations for general clearing participants

Under the ASX Clear Operating Rules, a general clearing participant is required to notify ASX of the following additional matters:

- **clearing agreements** – a copy of each clearing agreement and of any amendments to which it is a party;³² and

²⁷ ASX Clear Operating Rule 4.14.1(b).

²⁸ ASX Clear Operating Rules Procedure 1.7.2 concluding paragraph.

²⁹ See note 20 above and the accompanying text.

³⁰ ASX Clear Operating Rules 19.1A.1(e) - (i).

³¹ Section 912D of the Corporations Act.

³² ASX Clear Operating Rule and Procedure 9.1.3. This includes clearing agreements with participants of any approved market operator.

- proposed amendments to clearing agreements – any amendment to any of its clearing agreements at least 10 business days before the amendment becomes effective.³³

5. Additional notification obligations for direct clearing participants clearing for wholly-owned group entities

Under the ASX Clear Operating Rules, if a direct clearing participant clears for a wholly-owned group entity, the direct participant is required to notify ASX of the following additional matters:

- annually on the anniversary of having commenced to clear for the wholly-owned group entity a certification, in a form satisfactory to ASX, that the body corporate continues to satisfy the definition of wholly-owned group entity; and
- as far as practicable in advance if at any time the wholly-owned group entity ceases or will cease to satisfy the definition of wholly-owned group entity.³⁴

6. Lodging notifications via ASX Online

All of the above notifications can be made online via the participant forms facility on ASX Online. ASX Online is a secure extranet site provided by ASX to facilitate (among other things) the electronic lodgement of compliance related notifications by participants to ASX Participants Compliance.

The notification functionality in the participant forms facility on ASX Online covers the ASX and ASX 24 markets and the ASX Clear, ASX Settlement and ASX Clear (Futures) clearing and settlement facilities. It enables participants of more than one market or facility to file a single notification across multiple rulebooks.

A list of the notifications that can be submitted to ASX via the participant forms facility on ASX Online and the relevant notification name is available at:

<https://www.asxonline.com/content/dam/asxonline/public/documents/manuals/participant-notifications.pdf>

Instructions on how to use the participant forms facility on ASX Online are also available at:

<https://www.asxonline.com/content/dam/asxonline/public/documents/manuals/participant-forms-guide.pdf>

7. Capital-related notifications

The monthly, annual and ad hoc capital returns that a clearing participant is required to provide to ASX under ASX Clear Operating Rule 5.1 and the risk based capital requirements in Schedule 1 or NTA requirements in Schedule 2 of the ASX Clear Operating Rules are lodged via the ASX Return Lodgement and Monitoring System (RLM), rather than the participant forms facility.

RLM can be accessed via [ASX Online](#). Instructions on how to use RLM are available at:

www.asxonline.com/content/dam/asxonline/public/documents/manuals/rlm-system-user-guide/rlm-system-user-guide.pdf

A participant subject to the risk based capital requirements in Schedule 1 of the ASX Clear Operating Rules is required to notify ASX immediately if:

- its core capital is at any time less than the minimum amount required by rule S1.2.1(1)(b);³⁵

³³ ASX Clear Operating Rule and Procedure 9.1.5. A participant is not required to notify ASX of changes that do not affect the meaning or purpose of the clearing agreement (for example, pricing changes or minor typographical errors).

³⁴ ASX Clear Operating Rule 4.7.1(f) and Procedure 4.7.1.

³⁵ ASX Clear Operating Rule S1.2.2(1)(a).

- its liquid capital divided by its total risk requirement is equal to or falls below 1.2;³⁶ or
- it wishes to include an amount owing under a subordination arrangement in its liquid capital.³⁷

A participant subject to the NTA requirements in Schedule 2 of the ASX Clear Operating Rules is required to notify ASX immediately if:

- its NTA falls below the minimum amount which applies to that participant under rules S2.3 or S2.4;³⁸
- its NTA is less than 150% of the minimum amount required under rules S2.3 or S2.4;³⁹
- having notified ASX Clear that its NTA is less than 150% of the minimum amount required under rules S2.3 or S2.4, its NTA has then decreased by more than 20% since the amount last notified to ASX Clear under rule S2.5;⁴⁰ or
- it wishes to exclude an amount owing under a subordination arrangement from the sum of its liabilities for the purposes of calculating its NTA.⁴¹

A participant that has been exempted from the risk based capital requirements in Schedule 1 or the NTA requirements in Schedule 2 because it is subject to an alternative capital regime providing an appropriate level of prudential supervision is required to notify ASX immediately if:

- it ceases to be subject to that other capital regime;⁴² or
- it fails to comply with that other capital regime or any condition imposed by ASX Clear under rule 5.2.2 in connection with its exemption.⁴³

Finally, a participant must notify any change to its financial year end to ASX within 10 business days of the change taking effect.⁴⁴

These notifications are not made via ASX Online but rather should be made directly to the ASX Counterparty Risk Assessment team on 1800 636 850 or CRAteam@asx.com.au.

³⁶ ASX Clear Operating Rule S1.2.2(1)(b).

³⁷ ASX Clear Operating Rule S1.2.4(1).

³⁸ ASX Clear Operating Rule S2.5.1.

³⁹ ASX Clear Operating Rule S2.5.2(a).

⁴⁰ ASX Clear Operating Rule S2.5.2(b).

⁴¹ ASX Clear Operating Rule S2.8.1.

⁴² ASX Clear Operating Rule 5.2.6.

⁴³ ASX Clear Operating Rule 5.2.7.

⁴⁴ ASX Clear Operating Rule 4.4.3 concluding paragraph.