

SECTION 7 CLIENT REQUIREMENTS

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SECTION 7 CLIENT REQUIREMENTS

This Section deals with the contractual relationships between Clients and Participants. It:

- (a) outlines what steps a Participant must take before accepting a new Client including the requirement to have and maintain a written Client Agreement except in some limited circumstances;
- (b) governs the terms of the Client Agreement;
- (c) sets out what rights a Participant has where there is a default by a Client;
- (d) provides for what is to happen where a Client that is a natural person dies and what powers may be exercised by a Participant in these circumstances; and
- (e) addresses a client's right to make a claim on the NGF in respect of Cash CCP Transactions.

7.1 CLIENTS – DERIVATIVES MARKET TRANSACTIONS

7.1.1 Steps to be taken before agreeing to clear for a Client

Subject to Rule 7.1.3, before agreeing to clear Derivatives Market Transactions for a client, a Participant must:

- (a) have entered into an agreement with the client in accordance with Rule 7.1.2; and
- (b) give the client all of the documents which the Participant is required to give to a client under the Corporations Act, these Rules and the Procedures.

In this Rule 7, the agreement entered into between the Participant and the client is known as a Client Agreement.

Introduced 11/03/04 Origin OCH 2B.1.1 Amended 01/08/05

7.1.2 Terms of agreement with Client

Participants are required to enter into a written agreement incorporating the terms set out in Schedule 5 including provisions which provide for and give effect to, the novation of the Client Agreement upon a change of Participant in accordance with Rule 7.1.5. The Client Agreement may include other terms and conditions agreed between the Participant and the Client, provided those terms are not inconsistent with the terms set out in Schedule 5. To the extent of any inconsistency, the terms set out in Schedule 5 prevail.

Introduced 11/03/04 Origin OCH 2B.1.2 Amended 01/08/05, 23/07/18

7.1.3 Terms of agreement

A Participant does not need to enter into a Client Agreement incorporating the terms set out in Schedule 5 where:

- (a) in relation to an Options Market Transaction, the Participant's client is a Wholesale Client and the Participant has satisfied itself that the Wholesale Client has previously executed and lodged with ASX Clear a client agreement in accordance with the operating rules of the Approved Listing Market Operator and the ASIC Market Integrity Rules (as applicable);
- (b) in relation to a Futures Market Transaction, the General Participant's client is a Market Participant and the services provided by the General Participant to the Market Participant are only those that are covered by a Clearing Agreement which complies with Rule 9.1; or
- (c) in relation to an OTC Options Market Transaction, the Participant's client is a Wholesale Client and the Participant has satisfied itself that the Wholesale Client is not a "U.S. person" (as that term is defined in the Procedures) and the Client has previously executed and lodged with ASX Clear a client agreement for OTC Options Market Transactions as specified in the Procedures.

If a Participant clears for a person and that person has lodged, or is taken to have lodged a client agreement referred to in Rule 7.1.3(a) with ASX Clear, that person, the Market Participant and the Participant are taken to have entered into an agreement in accordance with the terms of that client agreement.

If a Participant clears for a person and that person has lodged, or is taken to have lodged a client agreement as referred to in Rule 7.1.3(c) with ASX Clear, that person and the Participant are taken to have entered into an agreement in accordance with the terms of that client agreement.

Introduced 11/03/04 Origin OCH 2B.1.4 Amended 01/08/05, 01/08/10, 27/06/11, 23/11/16

7.1.4 Participant to maintain and keep copy of Client Agreement

The Participant and the Client must maintain a Client Agreement which complies with this Rule 7 for as long as the person continues to be a Client of the Participant. The Participant must retain a copy of each Client Agreement which it enters into for at least 7 years following the date on which the agreement is terminated.

Introduced 11/03/04 Origin OCH 2B.1.3

7.1.5 Novation of Client Agreements on change of Participant

If a Participant proposes to change the Participant for all Derivatives CCP Contracts which it holds in a Client Account (for example because the Participant has transferred its business to another Participant) then the Participant must do the following:

- (a) no later than 20 Business Days before the proposed change of Participant, a Participant Change Notice must be sent to the relevant Client of the Participant, setting out details of the proposed change of Participant and other relevant

information about the reasons for the proposed change and the costs (if any) to the Client of the proposed change;

- (b) any conditions stipulated by ASX Clear in connection with the transfer have been met and ASX Clear consents to the transfer;
- (c) the Participant Change Notice must clearly state that the Client is under no obligation to agree to a change of Participant, and may choose to do any of the things set out in paragraphs (d) or (e) below;
- (d) a Client who receives a Participant Change Notice may choose to terminate the existing Client Agreement in accordance with the terms of the Client Agreement or by instructing the Participant to transfer its Derivatives CCP Contracts to another Participant;
- (e) if a Client does not take any action to terminate the Client Agreement in accordance with paragraph (d) above, and does not give any other instructions to the Participant which would indicate that the Client does not agree to the change of Participant then, on the Effective Date, the existing Client Agreement will have been taken to be novated to the new Participant and will be binding on all parties as if, on the Effective Date:
 - (i) the new Participant is a party to the Client Agreement in substitution for the existing Participant;
 - (ii) any rights of the existing Participant are transferred to the new Participant; and
 - (iii) the existing Participant is released by the Client from any obligations arising on or after the Effective Date;
- (f) the novation in paragraph (e) above will not take effect until the Client has received a notice from the new Participant confirming that the new Participant consents to acting as the Participant for the Client, and the Effective Date may as a result be later than the date set out in the Participant Change Notice;
- (g) the Client will be taken to have consented to the events referred to in paragraph (e) above, by the doing of any act which is consistent with the novation of the Client Agreement to the new Participant (for example by giving an instruction to the new Participant), on or after the Effective Date, and such consent will be taken to be given as of the Effective Date;
- (h) the existing Client Agreement continues for the benefit of the existing Participant in respect of any rights and obligations accruing before the Effective Date and, to the extent that any law or provision of any agreement makes the novation in paragraph (e) not binding or effective on the Effective Date, then the Client Agreement will continue for the benefit of the existing Participant until such time as the novation is effective, and the existing Participant will hold the benefit of the Client Agreement (to the extent it relates to a Derivatives CCP Contract transferred to the New Clearing Participant) on trust for the new Participant;

- (i) nothing in this Rule will prevent the completion of Derivatives Market Transactions and Derivatives CCP Contracts by the existing Participant where the obligation to complete those transactions arises before the Effective Date and the existing Client Agreement will continue to apply to the completion of those transactions, notwithstanding the novation of the Client Agreement to the new Participant under this Rule.

Introduced 11/03/04 Amended 28/11/05

7.2 DEFAULT BY A CLIENT

7.2.1 Participant may exercise rights

If:

- (a) a Client fails to pay, or provide security for, amounts payable by the Client to the Participant under these Rules;
- (b) a Client fails to discharge any obligation in connection with the settlement of a Cash CCP Transaction or Derivatives CCP Contract in accordance with its terms; or
- (c) any other event occurs which under the Client Agreement entitles the Participant to take action in respect of the Client,

the Participant may exercise any rights which the Participant has under these Rules, the Client Agreement or otherwise. The Client must account to the Participant for any deficiency and is entitled to any surplus which may result from the exercise of those rights.

Introduced 11/03/04 Origin OCH 2B.4

7.3 DEATH OF CLIENT AND OTHER CIRCUMSTANCES

7.3.1 Application of Rule 7.3

Rules 7.3.2 and 7.3.3 only apply where the Client is a natural person.

Introduced 11/03/04

7.3.2 No knowledge of Client's legal representative

If a Participant becomes aware of the death of a Client and, after reasonable enquiry, the Participant does not know the identity of the legal representative of the Client, the Participant may exercise the powers under Rule 7.3.5.

Introduced 11/03/04 Origin OCH 2B.3.1

7.3.3 No undertaking from legal representative

If:

- (a) a Participant becomes aware of the death of a Client;

- (b) the Participant knows the identity of the legal representative who has been appointed to the Client's estate; and
- (c) the legal representative does not, after being requested by the Participant to do so, undertake to meet the Client's obligations in respect of one or more Cash CCP Transactions or Derivatives CCP Contracts for the benefit of the Client's estate,

the Participant may exercise the powers under Rule 7.3.5 in respect of those transactions or contracts for which the undertaking is not given.

Introduced 11/03/04 Origin OCH 2B.3.2

7.3.4 Client unable to be contacted

If the Participant, after reasonable enquiry, has been unable to contact a Client to obtain instructions in respect of the exercise of any rights or the performance of any obligations in connection with a Cash CCP Transaction or Derivatives CCP Contract, the Participant may exercise the powers under Rule 7.3.5.

Introduced 11/03/04 Origin OCH 2B.3.3

7.3.5 Powers of Participant

Where Rule 7.3.2, 7.3.3 or 7.3.4 applies, the Participant may, without giving prior notice to the Client or the legal representative (as the case may be), take any action, or refrain from taking action, which it considers reasonable in the circumstances in connection with the Cash CCP Transactions or Derivatives CCP Contracts and, without limitation, the Participant may (as relevant):

- (a) take any action, in conjunction with the requirements of the Approved Settlement Facility and its Settlement Participants, in accordance with these Rules and the rules of that Approved Settlement Facility;
- (b) enter into, or cause to be entered into, one or more Derivatives Market Transactions to effect the close out of one or more Derivatives CCP Contracts in accordance with these Rules;
- (c) exercise one or more Options CCP Contracts; or
- (d) exercise, or cause to be exercised, any other rights or perform any other obligations conferred by the Rules or the Client Agreement in respect of the Cash CCP Transactions or Derivatives CCP Contracts.

Introduced 11/03/04 Origin OCH 2B.3.4

7.3.6 Client Liability

The Client or the estate of the Client (as the case may be) must account to the Participant as if the actions of the Participant under Rule 7.3.5 were taken on the instructions of the Client.

Without limitation, the Client or the estate of the Client (as the case may be) must account to the Participant for any deficiency and is entitled to any surplus which may result.

Introduced 11/03/04 Origin OCH 2B.3.4

7.3.7 Records

A Participant must keep records in writing containing full particulars of all enquiries made and action taken under this Rule 7.3.

Introduced 11/03/04 Origin OCH 2B.3.5

7.3.8 NGF Coverage – Cash CCP Transactions – [Deleted]

Introduced 11/03/04 Origin SCH 7.8.6 Deleted 18/12/06

7.4 NGF COVERAGE

7.4.1 Cash CCP Transactions

This Rule applies only in respect of Cash CCP Transactions.

If a Participant has a Clearing Obligation in relation to a Cash CCP Transaction registered in respect of a client that is not a Participant that is settled by net delivery or net payment under these Rules:

- (a) the net settlement constitutes performance of the Participant's obligation to the client to settle the transaction;
- (b) the Participant's obligation to account to the client for Financial Products bought or for the consideration for the sale of Financial Products is not affected by net settlement;
- (c) the client has such proprietary rights as the law recognises in respect of Financial Products and consideration held by or under the control of the Participant;
- (d) the client's rights to claim on the National Guarantee Fund under Regulations 7.5.24 and 7.5.26 of the Corporations Regulations are not affected by the use of net settlement under these Rules; and
- (e) where the Participant settles by making a net delivery of Financial Products, the Participant is taken to have effected a Transfer (as that term is used by the Approved Settlement Facility) on behalf of the client if (and to the extent to which), according to the Participant's records, the Financial Products which are delivered in Batch Settlement (as that term is used by the Approved Settlement Facility) are deducted from or attributed to Financial Products held by or on behalf of the client.

Note: This Rule 7.4.1 is intended to reflect Regulation 7.5.53(3) of the Corporations Regulations.

This Rule 7.4.1 does not apply to the settlement of a Failed CCP Batch Instruction which occurs pursuant to the set-off under Rule 12.8A of obligations and entitlements under the Failed CCP Batch Instruction against entitlements and obligations under the first leg of an Offsetting Transaction Arrangement entered into in respect of the Failed CCP Batch Instruction. Any settlement of a Failed CCP Batch Instruction which occurs pursuant to such set-off under Rule 12.8A does not constitute performance of or otherwise affect the Participant's settlement obligation to a client in relation to a Cash CCP Transaction which underlied such CCP Batch Instruction.

This Rule 7.4.1 however continues to apply to the settlement by net delivery or net payment under these Rules of the Cash CCP Transaction that is a transaction under the second leg of an Offsetting Transaction Arrangement entered into in respect of a Failed CCP Batch Instruction underlying which was a Cash CCP Transaction registered in respect of a client that is not a Participant. For the purposes of the application of this Rule 7.4.1 in such circumstances:

- (a) Clearing Obligations under the Cash CCP Transaction that is a transaction under the second leg of an Offsetting Transaction Arrangement are treated as if they were Clearing Obligations in relation to each Cash CCP Transaction which underlied the Failed CCP Batch Instruction that Offsetting Transaction Arrangement is in respect of; and
- (b) settlement of the Cash CCP Transaction that is a transaction under the second leg of an Offsetting Transaction Arrangement is treated as if it was settlement of each Cash CCP Transaction which underlied the Failed CCP Batch Instruction that Offsetting Transaction Arrangement is in respect of by net delivery or net payment under these Rules.

Note: As a mechanism for facilitating the set-off and settlement on the Settlement Date of obligations between ASX Clear and the respective Participant under a Cash CCP Transaction which underlies a CCP Batch Instruction Failed due to a Payment Shortfall (or to limit a Settlement Participant's net obligation to make payment in respect of that Payment Facility to the amount previously notified under the operating rules of the Approved Settlement Facility) or if there is a suspension or termination of a Payments Provider that would affect payment under such instruction, Rule 12.8A provides for the entry into of an Offsetting Transaction Arrangement between ASX Clear and the non-defaulting Participant in relation to the Failed CCP Batch Instruction.

The discharge of obligations under a Failed CCP Batch Instruction by way of set-off against equal but opposite entitlements under the first leg of an Offsetting Transaction Arrangement entered into in respect of that Failed CCP Batch Instruction will not however trigger a Transfer (as that term is defined under the operating rules of the Approved Settlement Facility) of Financial Products nor the performance of the Participant's settlement obligation to the client in relation to a Cash CCP Transaction which underlied such Failed CCP Batch Instruction until the underlying obligations and entitlements of the transaction as reflected in the second leg of the Offsetting Transaction Arrangement are settled by net delivery or net payment under these Rules.

Introduced 18/12/06 Origin SCH 7.8.6 Amended 28/04/14

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