

## SECTION 8 CLEARING FUND CONTRIBUTIONS AND PRIORITY OF APPLICATION OF CLEARING ASSETS

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## SECTION 8 CLEARING FUND CONTRIBUTIONS AND PRIORITY OF APPLICATION OF CLEARING ASSETS

This Section enables ASX Clear to seek Contributions from Participants.

Any Contribution received by ASX Clear is to be held by ASX Clear as its absolute legal and beneficial property. ASX Clear is obliged to pay interest to Participants in accordance with the Procedures in respect of Contributions.

This Sections also sets out:

- (a) the form in which a Contribution is to be made;
- (b) how the amount of the Contribution is to be calculated and reviewed;
- (c) the consequences if a Participant does not provide a Contribution;
- (d) the circumstances in which a Participant's Contribution may be used; and
- (e) the priority in which various assets may be used if the Participant defaults.

*Note: the previous Section 8 introduced on 11 March 2004 entitled "Clearing Fund Contributions and Priority of Application of Clearing Assets" has been deleted and replaced with this Section 8. Origin references to former ACH Rules are references to the Section 8 Rules in force prior to 31 March 2005.*

### 8.1 CONTRIBUTIONS

#### 8.1.1 ASX Clear may seek Contribution

In relation to all or any category of Market Transaction ASX Clear may determine that all Participants with authority to clear that category or all categories must make a Contribution to the financial support of ASX Clear in accordance with this Section 8. The Contribution will be able to be readily, unequivocally and irrevocably applied to support and discharge the financial obligations of ASX Clear under Derivatives CCP Contracts or Cash CCP Transactions, in the case of an event of default, in accordance with Rule 8.3.

ASX Clear must give such prior notice to Participants affected by any Contribution determination as is reasonable in the circumstances, and the notice must specify the time within which each affected Participant must provide the Contribution.

Introduced 31/03/05 Origin OCH S3.2.1 and former ACH 8.1.1 Amended 01/10/15

### **8.1.2 Calculation of Contribution amount**

ASX Clear may specify in the Procedures the amount of Contribution required from Participants clearing a category of Market Transaction by reference to:

- (a) a fixed amount per Participant or per Market Transaction; or
- (b) an amount calculated using a specified formula, such that the amount is referable to the volume, value, margin requirements or risk measurement of Market Transactions cleared by each Participant in a specified preceding period; or
- (c) any combination of these matters referred to in paragraphs (a) and (b).

ASX Clear may specify in the Procedures arrangements for the regular review and recalculation of Contributions.

Introduced 31/03/05 Origin OCH S3.3.1, S3.3.2 and former ACH 8.3.1

### **8.1.3 Increase following Review**

Following a review and recalculation by ASX Clear of Contributions required from Participants in accordance with the Procedures, ASX Clear may give notice of an increase in Contribution and the time within which the Participant must make a further Contribution.

Introduced 31/03/05 Origin OCH S3.3.7 and former ACH 8.3.2 Amended 01/10/15

### **8.1.4 Form and value of Contribution**

A Contribution must be in a form acceptable to ASX Clear in its absolute discretion. ASX Clear may prescribe limits on the securities or collateral which may be provided.

ASX Clear may in its absolute discretion determine the value of any Contribution provided otherwise than in cash or irrevocable commitment to provide cash for the purpose of determining whether a Participant has provided a Contribution of an amount which satisfies the provisions of the Rules.

Introduced 31/03/05 Origin OCH S3.2.2, S3.2.3 and former ACH 8.2.1 and 8.2.2 Amended 01/10/15

### **8.1.5 ASX Clear may direct a change in Contribution**

ASX Clear may direct a Participant who has provided a non-cash Contribution to change the form of the Contribution and the Participant must effect the alteration by such time as ASX Clear requires. If the Participant does not comply with the direction, then ASX Clear may convert into cash some or all of any non-cash Contribution and hold the cash as the Participant's Contribution. If, for any reason, ASX Clear is unable or unwilling to do so, the Participant is to be deemed not to have provided a Contribution as required.

Introduced 31/03/05 Origin OCH S3.2.4 and former ACH 8.2.3 Amended 01/10/15

### **8.1.6 Contributions – ASX Clear’s absolute legal and beneficial property**

Any Contribution received by ASX Clear is ASX Clear’s absolute legal and beneficial property.

Introduced 31/03/05 Origin OCH S3.2.5 and former ACH 8.2.4

### **8.1.7 Interest and accommodation fee**

ASX Clear may in its absolute discretion pay each Participant an accommodation fee in respect of its Contribution in recognition of and to compensate for the assumption of risk by the Participant. Such fee shall be as determined from time to time by the board of ASX Clear with due regard for the risk, exposure and amount of the Contribution of a Participant and may be, set on different bases for different categories of Participants.

ASX Clear will pay a Participant interest on a Contribution provided in cash at the rate determined by ASX Clear from time to time, provided that ASX Clear may withhold any interest where in the opinion of the board withholding such interest is necessary to ensure that the Participant is in compliance with Rule 8.1.1 and in such case such interest may be used by the board as part of the Participant’s Contribution.

Introduced 31/03/05 Origin OCH S3.2.6 and former ACH 8.2.5 Amended 01/10/15

### **8.1.8 Consequences of not providing Contribution**

Failure to provide a Contribution is a contravention of the Rules and constitutes an event of default under the Rules.

Introduced 31/03/05 Origin former ACH 8.1.2 Amended 01/10/15

### **8.1.9 Transitional arrangements for the introduction of margining of Cash CCP Transactions**

Any Contribution held by ASX Clear under the Contributions Determination dated 8 March 2007 on the Implementation Date will be taken for all purposes under these Rules, on and from that date, to have been provided by the Participant instead as additional Cover called by ASX Clear under Rule 14.6.1.

For the purpose of this Rule 8.1.9, the Implementation Date means the date for commencement of margining of Cash CCP Transactions as determined by ASX Clear and notified to Participants as the Implementation Date.

Introduced 07/06/13

### **8.1.10 Nature of Contribution**

A Contribution is a debt due and payable to ASX Clear.

A Participant that fails to pay ASX Clear a Contribution when due for payment must pay interest to ASX Clear on the unpaid amount. Interest is to be calculated according to the formula set out in the Procedures.

Introduced 01/10/15

## 8.2 EMERGENCY ASSESSMENTS – [DELETED]

Introduced 31/03/05 Deleted 01/10/15

## 8.3 APPLICATION OF CLEARING ASSETS

### 8.3.1 Priority of Application and Assets

If there is a Clearing Loss, ASX Clear must apply the following assets in the following order (starting from the assets in paragraph (a)) to enable ASX Clear to meet the Clearing Loss:

- (a) any Cover, and any cash or bank guarantee provided by the Clearing Loss Participant under Rule S1.2.11, available to ASX Clear to discharge the obligations of the Clearing Loss Participant;
- (b) any asset of the Clearing Loss Participant which ASX Clear has a right under the Rules to apply to discharge the Clearing Loss Participant's obligations, which includes without limitation any amounts of variation margin or other amounts which would otherwise be payable to the Clearing Loss Participant;
- (c) any Contributions of the Clearing Loss Participant;
- (d) any NGF Amount remaining;
- (e) ASX Clear's assets held in liquid form existing immediately before the Clearing Loss calculation starts, up to the amount prescribed in the Procedures;
- (f) the proceeds of any insurance policies held by ASX Clear or other financial backing available to ASX Clear (as designated for the purposes of this paragraph and set out in the Procedures) for the purpose of meeting its Clearing Obligations;
- (g) any Contributions of other Participants;
- (h) Recovery Assessments received from one or more Participants; and
- (i) ASX Clear's other assets which have been expressly prescribed in the Procedures for the purposes of this paragraph as being available for application up to the amount specified in the Procedures (but excluding any other assets of ASX Clear which have not been so prescribed).

A Contribution cannot be applied by ASX Clear to discharge, or to compensate ASX Clear for discharging, a Clearing Obligation incurred before ASX Clear makes its determination under Rule 8.1.1 to require the Contribution.

ASX Clear may apply the assets referred to in this Rule in or towards the satisfaction of the Clearing Loss irrespective of whether it has finally determined the amount of a Clearing Loss in respect of a Clearing Loss Participant or Clearing Loss Participants.

The application of any of the assets referred to in this Rule with respect to a Clearing Loss or Clearing Losses does not preclude the use of any remaining assets in any subsequent Clearing Loss or Clearing Losses.

Introduced 31/03/05 Origin OCH S3.5.2 and former ACH 8.5.4 Amended 28/11/08, 01/01/10, 01/10/15

### **8.3.1A Application of clearing assets for multiple Clearing Loss Participants**

ASX Clear may choose to treat the Clearing Losses which arise in respect of multiple Clearing Loss Participants during a Default Period as one combined Clearing Loss and apply the assets referred to in Rule 8.3.1 to that Clearing Loss if ASX Clear considers it would be appropriate to do so. If ASX Clear does not choose to treat the Clearing Losses which arise in respect of multiple Clearing Loss Participants during a Default Period as one combined Clearing Loss, ASX Clear will apply the assets referred to in Rule 8.3.1 separately and consecutively in respect of each Clearing Loss Participant.

Introduced 01/10/15

### **8.3.2 Application of Contributions**

Where some but not all of the aggregate amount available to ASX Clear under Rule 8.3.1(g) is required to enable ASX Clear to meet a Clearing Loss, ASX Clear must apply the Contributions of the Participants referred to in that paragraph pro rata to the total of their Contributions existing at the time the Default Period commences.

Introduced 31/03/05 Origin OCH S3.5.5 and former ACH 8.5.6 Amended 01/10/15

### **8.3.3 ASX Clear may borrow or make other financial arrangements**

To enable ASX Clear to discharge its obligations in a timely manner, ASX Clear may borrow or make other financial arrangements which it considers appropriate and apply the proceeds of any Contribution, insurance policies referred to in Rule 8.3.1(f) and Recovery Assessments to repay those borrowings or to otherwise discharge its obligations under those financial arrangements (including interest obligations).

Introduced 31/03/05 Origin OCH S3.5.5 and former ACH 8.5.6 Amended 01/10/15

### **8.3.4 Application of assets in different order**

Despite Rule 8.3.1, ASX Clear may apply the assets referred to in Rule 8.3.1 in any order it considers appropriate to enable ASX Clear to meet its Clearing Obligations in a timely manner. If ASX Clear acts in this way, ASX Clear subsequently must make the adjustments it considers necessary to restore ASX Clear and the Participants to the position they would have been in had the assets been applied in the order set out in Rule 8.3.1.

Introduced 31/03/05 Origin OCH S3.5.6 and former ACH 8.5.7

### **8.3.5 Liability of defaulting Participant**

Action by ASX Clear under this Rule 8.3 does not release a Clearing Loss Participant from any liability which they have to ASX Clear or another Participant.

Introduced 31/03/05 Amended 01/10/15

### **8.3.6 Recovery by ASX Clear against Clearing Loss Participant**

ASX Clear may seek to recover from a Clearing Loss Participant all amounts owing by them to ASX Clear. However, ASX Clear must seek recovery if one or more of the other Participants, or entities which have resigned from being Participants, who are Contributors under the Recovery Rules (excluding any Clearing Loss Participants):

- (a) indemnifies ASX Clear (on terms acceptable to ASX Clear) against all costs, expenses, liabilities and obligations which ASX Clear may incur by seeking recovery; and
- (b) provides security for the costs of ASX Clear in the form and amount required by ASX Clear, unless ASX Clear believes that to seek recovery would be contrary to the best interests of ASX Clear or the Participants (other than the Participant against which recovery action is proposed), or otherwise not appropriate having regard to Rule 1.15.

Introduced 31/03/05 Origin OCH S3.5.8 and former 8.5.9 Amended 01/10/15

### **8.3.7 Recovery by non-defaulting Participant against defaulting Participant – [Deleted]**

Introduced 31/03/05 Deleted 01/10/15

### **8.3.8 Top up of Contributions – [Deleted]**

Introduced 31/03/05 Origin OCH S3.5.11 and former ACH 8.5.12 Deleted 01/10/15

## **8.4 RETURN OF CONTRIBUTIONS**

### **8.4.1 Proceeds of recovery action against Clearing Loss Participant – [Deleted]**

Introduced 31/03/05 Origin OCH S3.5.9 and former ACH 8.5.10 Deleted 01/10/15

### **8.4.2 Proceeds of recovery action against Unpaid Amount Participant – [Deleted]**

Introduced 31/03/05 Deleted 01/10/15

### **8.4.3 No obligation to account in certain circumstances – [Deleted]**

Introduced 31/03/05 Deleted 01/10/15

### **8.4.4 Retention of amounts recovered in some cases – [Deleted]**

Introduced 31/03/05 Origin OCH S3.5.10 and former ACH 8.5.11 Deleted 01/10/15

### **8.4.5 Release of Contribution**

Subject to Rule 8.4.6, and to the extent that it has not been applied to meet any Clearing Loss under Rule 8.3.1 or retained in accordance with the Recovery Rules, ASX Clear must return a Contribution made by a Participant in relation to a category of Market Transaction if:

- (a) the Participant's authority to clear the category of Market Transaction is terminated and the Participant has no Cash CCP Transactions or Derivatives CCP Contracts in relation to that category; or

- (b) as a result of a review and recalculation under Rule 8.1.2, ASX Clear determines that a Participant's Contribution for a category of Market Transaction has reduced and ASX Clear is satisfied that, immediately following the release, ASX Clear would continue to hold the total amount of Contribution required from that Participant under these Rules.

Unless otherwise retained in accordance with the Recovery Rules, the Contribution is to be returned to the Participant after the review and recalculation of Contributions which next follows the resignation of the Participant or the termination of the Participant's authority to clear the category of Market Transaction in relation to which the Contribution was made becoming effective.

If the Participant has any overdue debt obligations to ASX Clear at that time, ASX Clear may set off against the overdue debt obligations the amount that would otherwise be returned.

A Participant's Contribution shall remain available for application by ASX Clear in accordance with Rule 8.3 in respect of an event of default by any Participant that occurs prior to the Participant's resignation or termination becoming effective in accordance with the Rules. ASX Clear must not apply the Participant's Contribution in accordance with Rule 8.3 in respect of an event of default by another Participant that occurs after the Participant's resignation or termination becomes effective.

*Note: The Recovery Rules affect the circumstances in which ASX Clear will be required to release any Contribution made by a Participant.*

Introduced 31/03/05 Origin OCH S3.3.8, S3.4.4 and former ACH 8.3.3 and 8.4.1 Amended 01/10/15

#### **8.4.6 Effect of event of default by Participant**

Where ASX Clear is entitled to take any action against a Participant under Rule 15 or where any such action is under way (irrespective of whether the action is being taken in respect of the Participant who has requested a reduction or return of Contribution), ASX Clear may determine that any reduction or return of Contribution to any Participant is not to take place until the later of:

- (a) any action taken under Rule 15 is resolved; or
- (b) any Clearing Loss being fully satisfied.

*Note: The Recovery Rules may affect the operation of this Rule 8.4.6.*

Introduced 31/03/05 Origin OCH S3.3.9 and former ACH 8.4.2 Amended 01/10/15

#### **8.4.7 Contributions remaining following a default**

The application of any Contributions under Rule 8.3 in relation to one Clearing Loss does not preclude ASX Clear from applying any remaining amount of a Contribution in relation to another Clearing Loss.

Introduced 31/03/05 Origin OCH S3.5.7 and former ACH 8.5.8

#### **8.4.8 Lodgment of replacement Contribution**

ASX Clear must return a Participant's Contribution if the Participant lodges a replacement Contribution with ASX Clear of a type and in a manner acceptable to ASX Clear.

Introduced 31/03/05 Origin OCH S3.4.4 and former ACH 8.4.1

#### **8.4.9 Emergency Assessment remaining following a Clearing Loss – [Deleted]**

Introduced 31/03/05 Deleted 01/10/15

### **8.5 ADDITIONAL FUND**

#### **8.5.1 ASX Clear may establish separate fund**

ASX Clear may, where it considers it appropriate, also establish a separate fund for a particular category or categories of Market Transactions to which all of Section 8 will apply

Introduced 31/03/05 Origin former ACH 8.6.1

### **8.6 RECOVERY RULES**

#### **8.6.1 No effect on Recovery Rules**

Nothing in this Rule 8 limits the Recovery Rules.

*Note: The Recovery Rules may affect the operation of this Rule 8.*

Introduced 01/10/15

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