

SECTION 15 DEFAULT

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SECTION 15 DEFAULT

This Section sets out:

- (a) what constitutes an event of default by a Participant;
- (b) the powers of ASX Clear, if an event of default occurs, to take various action in respect of a Participant in its name and at its expense;
- (c) the powers of ASX Clear, on written notice to a Participant, to act in relation to events which, although not events of default, are events that ASX Clear considers may have a material adverse effect on, amongst other things, the capacity of a Participant to meet its obligations to ASX Clear, the financial position of the Participant or the financial position of ASX Clear;
- (d) the liability of ASX Clear where it bona fide exercises its powers and rights, the indemnities given by Participants to ASX Clear and the appointment of ASX Clear to act as agent for Participants;
- (e) the notice requirements that must be met by ASX Clear; and
- (f) the right of ASX Clear or any Participant to terminate its Derivatives CCP Contracts and Cash CCP Transactions in the event of a payment default or insolvency event of ASX Clear.

15.1 EVENTS OF DEFAULT

15.1.1 Events of default by Participant

ASX Clear may regard any of the following events as an event of default by a Participant:

- (a) ASX Clear restricts the Participant from accessing the Clearing System;
- (b) the Participant fails to pay any amount due and payable to ASX Clear (under these Rules or otherwise);
- (c) the Participant fails to perform any of its obligations to ASX Clear (under these Rules or otherwise);
- (d) the Participant fails to comply with any reasonable direction, decision or requirement of ASX Clear (under these Rules or otherwise);
- (da) the Participant has failed to comply with a determination made by an Old Tribunal (as defined in Rule 19.20) pursuant to the Old Australian Securities Exchange Disciplinary Processes and Appeals Rulebook (as defined in Rule 19.20);

- (db) the Participant fails to comply with any action taken by ASX Clear in accordance with Rule 19.3.1 or the provisions of the ASX Enforcement and Appeals Rulebook (including as may be affirmed or varied by the Appeal Tribunal (as the case may be following an appeal against such action) pursuant to the ASX Enforcement and Appeals Rulebook;
- (e) without limiting Rules 15.1(b),(c), (d), (da) or (db), any failure by a Participant which is a Seller in respect of a Deliverable Derivatives CCP Contract to perform its settlement obligations on settlement of that contract or to take all steps required to put itself in the position to comply with its settlement obligations;
- (f) the Participant indicates that it will or may suspend payment to ASX Clear or to creditors;
- (g) the Participant is or states that it is, or reasonably suspects that it may be, insolvent, or ceases or indicates that it will or may cease to carry on business;
- (h) 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;
- (i) someone takes control of the Participant's property for the benefit of the Participant's creditors because the Participant is, or is likely to become, insolvent;
- (j) where the Participant is a partnership, any partner becomes an insolvent under administration, or any other person takes any step which might result in any partner becoming an insolvent under administration;
- (k) any distress, execution or other process is levied or enforced or served upon or against any property of the Participant;
- (l) an investigator, inspector or other officer is appointed, or an investigation directed or commenced under the Corporations Act or other legislation to investigate all or part of the affairs of the Participant or a related entity, in circumstances which are, in the opinion of ASX Clear, material to the capacity of the Participant to meet its obligations to ASX Clear;
- (m) a Participant does not have the level of capital required under Section 5;
- (n) a Participant no longer satisfies the Admission Requirements or fails to comply with any condition of admission;
- (o) a Participant made a wilful omission or misstatement in respect of a material matter prior to, or in connection with, its application for admission;
- (p) a Participant or any of its Employees is the subject of any regulatory or disciplinary action by any body;
- (q) a Participant has failed to comply with Rule 19.1;

- (r) the Participant is suspended, expelled or terminated as a member or participant of, or subject to any sanction imposed by, ASX Clear, an Approved Market Operator, an Approved Settlement Facility, any Australian or overseas derivatives, securities, commodity or stock exchange or market or any other clearing and settlement facility or is subject to any sanction imposed by an Australian or overseas regulatory authority or the Participant ceases to be entitled to carry on business.

Introduced 11/03/04 Origin OCH 12.1 Amended 01/08/10, 15/06/15

15.2 POWERS OF ASX CLEAR ON DEFAULT

15.2.1 ASX Clear may take action

If ASX Clear considers that an event of default under Rule 15.1 has occurred, or if Rule 15.3 applies, ASX Clear may take any or all of the following actions in respect of the Participant, in the name of (if appropriate) and at the expense of the Participant, in any order but subject to Rule 15.4, immediately or at any other time ASX Clear determines, and without the need for any prior notice to or consent of the Participant or any other person:

- (a) calculate one or more net amounts under and in accordance with Rule 10.3 and demand immediate payment of any net amount payable by the Participant;
- (b) refuse to register Derivatives Market Contracts reported for registration in the Participant's name or allocated to the Participant under Rule 11.1;
- (c) enter into transactions on a market conducted by an Approved Market Operator, on an Underlying Market (including an over the counter market) or on another market in order to close out, or eliminate or minimise the risk from, Clearing Obligations associated with Derivatives CCP Contracts or Cash CCP Transactions registered in an Account of the Participant. Without in any way limiting its powers, ASX Clear may borrow Financial Products for the purpose of meeting settlement obligations;
- (d) transfer any or all:
 - (i) Cash CCP Transactions registered in the Cash Market Account of the Participant to another Participant selected by ASX Clear in its discretion, with the agreement of the selected Participant; or
 - (ii) Derivatives CCP Contracts registered in an Account of the Participant, to another Participant selected by ASX Clear in its discretion, with the agreement of the selected Participant, as if the Participant had made a request for transfer under Rule 13.1, and simultaneously transfer to the credit of the receiving Participant Cover and Excess Cash recorded in respect of the transferred Derivatives CCP Contracts under Rules 10.2.2, 10.2.3 and 10.2.4;
- (e) close out Derivatives CCP Contracts which the Participant is entitled under Rule 13.2.1 to close out;

- (f) exercise, or allow to expire, any Options CCP Contracts registered in an Account of the Participant;
- (g) terminate Cash CCP Transactions and Derivatives CCP Contracts registered in an Account of the Participant at a price determined by ASX Clear subject to these Rules;
- (h) in relation to Collateral secured in favour of ASX Clear in respect of that Participant:
 - (i) receive any dividends, interest or other income payable in respect of that Collateral and do anything else in relation to that Collateral that an owner of the Collateral could do;
 - (ii) register all or part of the Collateral in the name of ASX Clear;
 - (iii) deal with all or part of the Collateral in the same way as the holder or owner of the Collateral could if the Collateral were not secured in favour of ASX Clear;
 - (iv) sell all or part of the Collateral whether by public auction and/or private arrangement and whether on-market or off-market;
 - (v) allow the purchaser of any Collateral time for payment of all or part of the purchase money;
 - (vi) appoint a receiver or receiver and manager to the Collateral to do any of the things referred to in sub-paragraphs (i) to (v) inclusive; and
 - (vii) do anything which ASX Clear considers necessary for any of these purposes;
- (i) exercise its rights to apply or set off Cash Cover or Excess Cash under these Rules;
- (j) subject to Sections 10 and 14, apply in or towards satisfaction of any amount due and payable to ASX Clear and in any order:
 - (i) any Cash Cover held in respect of the Participant; and
 - (ii) the proceeds of demanding, calling in, selling, realising and converting into cash any Collateral provided by or on behalf of the Participant after deducting all costs, commissions, duties and taxes payable in connection with any of those actions;
- (k) release or return directly to a Client or to any external administrator of the Participant any Excess Cash or excess Collateral;
- (l) subject to Rule 19.5, suspend or terminate the Participant's authority to clear all or any category of Market Transaction, or impose restrictions as new conditions on its authority to clear a category of Market Transaction. Such suspension or termination, or imposition of restrictions, takes effect at the time determined by ASX Clear in its absolute discretion;

- (m) appoint any person as its agent for the purpose of exercising a power under this Rule 15.2;
- (n) where the event of default is a failure by the Buyer to pay the Settlement Amount in respect of a Deliverable Derivatives CCP Contract by the time for settlement (and without limiting any other powers ASX Clear may exercise under this Rule 15.2.1):
 - (i) defer the settlement of the relevant Derivatives CCP Contract until it determines that settlement can occur at a later time in accordance with that Rule; or
 - (ii) terminate that contract and pursue any legal remedy available to ASX Clear in connection with that failure (including for example suing the Buyer to recover damages for breach of that Derivatives CCP Contract and these Rules) and resell or otherwise deal with any interest in the Underlying Commodity which the Buyer would have acquired under the rules governing the settlement of the contract, had settlement occurred;
- (o) where the event of default is a failure by the Seller of the type referred to in Rule 15.1.1(e) (and without limiting any other powers ASX Clear may exercise under this Rule 15.2.1):
 - (i) defer the settlement of the relevant Derivatives CCP Contract until it determines that settlement can occur at a later time in accordance with that Rule; or
 - (ii) terminate that contract and pursue any legal remedy available to ASX Clear in connection with that default (including, for example, suing the Seller to recover damages for breach of that Derivatives CCP Contract and these Rules);
- (p) without prejudice to any other rights which ASX Clear may have under the Rules, under statute, at law or in equity, take any other action, or take no action, or direct the Participant to take any action or no action, in order to eliminate or minimise risk with respect to Cash CCP Transactions or Derivatives CCP Contracts of the Participant which ASX Clear considers appropriate having regard to Rule 1.15;
- (q) set off or apply in or towards any amount due and payable by the defaulting Participant to ASX Clear (including in relation to any Account or Market Transaction) any amount due and payable by ASX Clear to the defaulting Participant (including in relation to any Account or Market Transaction);
- (r) calculate a net amount or amounts due and payable by the defaulting Participant to ASX Clear or ASX Clear to the defaulting Participant following the exercise by ASX Clear of any or all of its rights under this Rule 15, and demand immediate payment of any net amount payable by the defaulting Participant to ASX Clear. Without limiting any of its rights or powers, ASX Clear agrees that it will exercise its rights under this Rule 15.2.1(r) to calculate a net amount with respect to the defaulting Participant. ASX Clear may exercise

any of its rights and powers and take any other actions in connection with the defaulting Participant before, or after, it does so; and

- (s) exercise its rights under the Recovery Rules.

Introduced 11/03/04 Origin OCH 12.2.1 Amended 13/07/09, 28/05/12, 07/06/13, 23/06/14, 15/06/15, 01/10/15, 30/11/15

15.2.2 Legal requirement for notice

Despite Rule 15.2.1, ASX Clear may be required by law to give notice before taking action under Rule 15.2.1 or may have obligations imposed by law about what it must do when taking that action. However, to the extent that these requirements and obligations can be excluded or limited by agreement, they are so excluded and limited and ASX Clear does not have to notify the Participant, any Client or the legal owner of any Collateral before taking any of the actions referred to in Rule 15.2.1.

Introduced 11/03/04 Origin OCH 12.2.2

15.3 OTHER EVENTS

15.3.1 ASX Clear may take action

If an event, or series of events whether related or not, occurs in relation to a Participant or a Related Entity of a Participant, which is not an event of default under Rule 15.1, including without limitation:

- (a) the Participant fails to comply, or indicates that it will or may fail to comply with any of the Rules or the Procedures or the terms of any agreement with ASX Clear;
- (b) ASX Clear has reasonable grounds for suspecting that a Participant will or may fail to comply with any of the Rules or the Procedures or the terms of any agreement with ASX Clear;
- (c) ASX Clear is satisfied that the acts, omissions or proposed conduct of a Participant may adversely affect the operation or integrity of the Clearing Facility;
- (d) the Participant or a Related Entity fails to comply, or indicates that it will or may fail to comply with any rule or the procedure of, or any term of any agreement with, an Approved Market Operator or any other market operator or clearing and settlement facility;
- (e) ASX Clear is informed by an Approved Market Operator or any other market operator or clearing and settlement facility that the Participant or a Related entity is not, or may not be, complying with its obligations under the rules or the procedures of, or any terms of any agreement with, an Approved Market Operator or any other market operator or clearing and settlement facility;
- (f) the Participant or a Related Entity fails to comply, or indicates that it will or may fail to comply with any legislative or regulatory requirement;

- (g) the Participant fails to deliver Financial Products to discharge its Clearing Obligation; or
- (h) ASX Clear is informed by any other regulatory body that the Participant or a Related Entity is not, or may not be, complying with any legislative or regulatory requirement,

and ASX Clear considers the event or series of events has or may have a material adverse effect on:

- (i) the capacity of the Participant to meet all its obligations to ASX Clear, an Approved Market Operator, an Approved Settlement Facility or other Participants;
- (j) the financial position of ASX Clear or the Participant; or
- (k) the market conducted by an Approved Market Operator or an Underlying Market,

ASX Clear may, immediately after giving written notice to the Participant of its intention to rely on this Rule, take any or all of the actions set out in Rule 15.2 in relation to the Participant.

Introduced 11/03/04 Origin OCH 12.3

15.4 TRANSFER OF CLIENT DERIVATIVES CCP CONTRACTS

15.4.1 ASX Clear may attempt to transfer Derivatives CCP Contracts

If:

- (a) Rule 15.2 applies;
- (b) the Participant has a Derivative CCP Contract registered in a Client Account;
- (c) the Participant has no outstanding obligations or liabilities to ASX Clear in respect of that Client Account; and
- (d) all applicable conditions set out in the Procedures have been satisfied,

then before taking any other action under Rule 15.2 ASX Clear may attempt to transfer that Derivatives CCP Contract to another Participant under Rule 15.2.1(d). Any transfer will be effected in accordance with Rule 13.1 (except that Rule 13.1.1 need not be complied with).

Introduced 11/03/04 Origin OCH 12.4 Amended 30/11/15

15.5 NOTIFICATION OF EXERCISE OF POWER

15.5.1 Notification to Participant

ASX Clear will keep the Participant reasonably informed of actions ASX Clear has taken under Rule 15.2 in accordance with the Notice requirements under Rule 19.4.2.

Introduced 11/03/04 Origin OCH 12.5.1 Amended 15/06/15

15.5.2 Notification to Approved Market Operator or Approved Settlement Facility

ASX Clear will notify each relevant Approved Market Operator and Approved Settlement Facility for which the Participant clears of action ASX Clear has taken under Rule 15.2 as soon as practicable after taking that action.

Introduced 11/03/04 Origin OCH 12.5.2

15.6 APPOINTMENT OF ASX CLEAR AS AGENT

15.6.1 Participant irrevocably appoints ASX Clear as agent

Each Participant irrevocably appoints severally ASX Clear, and every officer, agent, person acting for or on behalf of ASX Clear and each other representative for the time being of ASX Clear, at the option of ASX Clear, to be the agent of the Participant and irrevocably authorises ASX Clear and every officer, agent, person and other representative for the time being of ASX Clear, at the option of ASX Clear, to do all acts and execute all documents on its behalf for the purpose of exercising the powers conferred on ASX Clear by this Section 15.

Introduced 11/03/04 Origin OCH 12.6

15.7 NO LIABILITY OF ASX CLEAR

15.7.1 ASX Clear not liable for bona fide exercise of power, right or discretion

Without limiting Rule 1.10, none of ASX Clear, its officers, representatives, agents or contractors is liable to a Participant or to any other person for any loss, liability, damage, cost or expense arising in any way (including, without limitation, by negligence) from the bona fide exercise of any power, right or discretion conferred upon ASX Clear by this Section 15.

Introduced 11/03/04 Origin OCH 12.7

15.8 INDEMNITY

15.8.1 Participants to indemnify ASX Clear

Each Participant indemnifies and will keep indemnified ASX Clear and its officers, representatives, agents and contractors against all actions, proceedings, claims, demands, damages, costs, expenses and any other amounts including any transaction taxes, goods and services taxes or any other duties or taxes (extending to include any taxes payable by ASX Clear on a payment made under this indemnity) against or incurred by any of ASX Clear, its officers, representatives, agents or contractors arising

out of or in connection with any event of default under Rule 15.1, any circumstances under Rule 15.3 or any action taken by, or any inaction by, any of ASX Clear or its officers, representatives, agents or contractors under this ASX Clear Section 15.

Introduced 11/03/04 Origin OCH 12.8

15.9 PROTECTION OF THIRD PARTIES

15.9.1 No requirement to enquire

No person need enquire whether any action taken under this ASX Clear Section 15 is properly or validly taken nor will a person be affected by any notice or claim that any action taken under this Section 15 is improper or unnecessary.

Introduced 11/03/04 Origin OCH 12.9

15.10 SURVIVAL OF POWERS

15.10.1 Rights, powers and remedies survive Participant's termination

The rights, powers and remedies of ASX Clear under this Section 15 in relation to a Participant survive the termination of the Participant's admission as a Participant.

Introduced 11/03/04 Origin OCH 12.10

15.11 TERMINATION WITH RESPECT TO ASX CLEAR

15.11.1 Termination

If:

- (a) **(ASX Clear Payment Default)** all of the following occur:
- (i) ASX Clear fails to make, when due, any payment in respect of a payment claim of a Participant against ASX Clear arising from a Derivatives CCP Contract or Cash CCP Transaction;
 - (ii) such Participant has notified ASX Clear of such failure;
 - (iii) such Participant notifies ASX Clear again of such failure after the expiry of a period of not less than five Business Days after the notification in (ii); and
 - (iv) ASX Clear's failure to make such payment to such Participant continues for a period of more than five Business Days after notification in (iii),

and for this purpose and without limitation, a payment will be considered to have been made by ASX Clear if a corresponding amount has been credited to the relevant account of the relevant Participant. Delays in effecting such credit for technical reasons will not lead to an ASX Clear Payment Default provided that funds were available to enable ASX Clear to make the credit; or

- (b) **(ASX Clear Insolvency Event)** ASX Clear is wound-up in insolvency under the Corporations Act or is subject to statutory management either instituted by it or against it by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in Australia,

then, at the election of either ASX Clear or any Participant (if a Participant makes this election then only its Derivatives CCP Contracts and its Cash CCP Transactions are affected):

- (I) the present and future obligations of ASX Clear and each Participant to make payments and deliveries under the terms of the Derivatives CCP Contracts and Cash CCP Transactions are terminated and are no longer required to be made;
- (II) ASX Clear is to calculate the termination value of those terminated obligations. The termination values are to take into account the amounts which would otherwise be debited or credited in respect of the daily revaluation of the Cash CCP Transactions and Derivatives CCP Contracts for margining purposes;
- (III) ASX Clear will net the termination values so calculated separately in respect of each Participant's (A) House Account(s) and Cash Market Account and (B) Client Account, so that only a net cash amount is payable in respect of each of (A) and (B) and between ASX Clear and each respective Participant. Each such net cash amount is to be payable by the party who is determined to owe it on the Business Day on which it is determined and notified to the Participant.

If ASX Clear is, for operational reasons, unable to make one or more calculations or determinations required to be made under this Rule then those particular calculations are to be made by the relevant Participant.

Introduced 23/06/14 Amended 01/10/15

15.11.2 Netting for Client Accounts

If a Participant has more than one Client Account then the netting referred to in Rule 15.11.1(III) above is to be conducted separately in respect of each Client Account of that Clearing Participant. A net cash amount is to be payable in accordance with Rule 15.11.1(III) in respect of each separate netting which takes place.

Introduced 23/06/14

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