



# ASX OPERATING RULES

## SECTION 5 MONITORING CONDUCT AND ENFORCING COMPLIANCE

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## SECTION 5 MONITORING CONDUCT AND ENFORCING COMPLIANCE

### INFORMATION, MONITORING AND INVESTIGATION

#### Self reporting

[5000] A Market Participant must notify ASX in writing immediately if any of the circumstances set out in the Procedures occur.

#### Provision of Information

[5010] ASX may at any time investigate the activities of a Market Participant in relation to the performance by the Market Participant of its obligations (including for the avoidance of doubt its ability in future to perform its obligations) under the Rules or as ASX otherwise considers appropriate having regard to Rule [6120]. As part of any investigation, ASX may require a Market Participant to do one or more of the following:

- (a) to provide any information known to the Market Participant;
- (b) by notice, to provide or permit inspection at the offices of the Market Participant or any other place notified by ASX of any records in the custody, control or possession of the Market Participant;
- (c) by notice, to appear, and have its Employees appear, for interviews before ASX to give any information required by ASX in relation to the activities of the relevant Market Participant; or
- (d) by notice, to provide specified information relating to any dealings in Products of the relevant Market Participant.

[5011] If a Market Participant is required to provide information or receives a notice under Rule [5010], the Market Participant must:

- (a) provide the information, or provide or permit inspection of the records in accordance with the notice;
- (b) appear, and ensure its Employees appear, for interviews before ASX and give the information required by ASX in accordance with the notice;
- (c) provide assistance to ASX as ASX may reasonably require in relation to the information required or the notice; and
- (d) bear any costs incurred by the Market Participant in connection with providing the information or complying with the notice or providing assistance to ASX.

[5012] ASX may, in connection with any investigation, do one or more of the following:

- (a) give directions about who may be present at an interview of another person;
- (b) impose conditions on the attendance of a person, including in relation to appropriate undertakings as to confidentiality; and
- (c) impose any other requirement which ASX considers to be reasonably necessary to preserve the integrity of the investigation.

A Market Participant must comply, and ensure that its Employees comply, with any requirement imposed under this Rule [5012].

[5013] ASX may appoint an agent to conduct investigations on its behalf. If ASX appoints an agent to conduct investigations on its behalf the Market Participant must do all things required under these Rules as if the investigation were conducted by ASX.

[5014] Subject to Rule [5015], if:

- (a) ASX is entitled to exercise its powers against a Market Participant under Rules [5010] to [5012] in respect of particular circumstances; and
- (b) a Related Body Corporate of ASX has similar powers under its operating rules and is entitled to exercise those powers against the same Market Participant in respect of the same or similar circumstances,

ASX need not exercise those powers separately but may, exercise those powers together with the exercise by the Related Body Corporate of its powers.

[5015] Even though the exercise of powers are consolidated under Rule [5014], ASX must comply with the Rules which govern those powers. The consolidation of the exercise of powers under Rule [5014] does not confer on ASX or on the Related Body Corporate any powers in addition to those conferred on them by these Rules or the rules of the Related Body Corporate.

### **Provision of independent expert report or certification**

[5020] ASX may by notice to a Market Participant require the Market Participant to provide a:

- (a) report from a suitably qualified independent expert approved by ASX expressing an opinion as to:
  - (i) the performance by the Market Participant of its obligations (including for the avoidance of doubt its ability in future to perform its obligations) under the Rules;
  - (ii) the Market Participant's capacity to continue to meet the requirements for admission as a Market Participant or the granting of a relevant Trading Permission; or
  - (iii) any other matter which in the opinion of ASX is necessary to assist ASX in the discharge of its functions under these Rules or as ASX otherwise considers appropriate having regard to Rule [6120]; or
- (b) certification from a suitably qualified independent expert approved by ASX as to compliance by the Trading Participant with the:
  - (i) Operational Requirements; or
  - (ii) VolumeMatch Book Requirements,

in a form acceptable to ASX, including in such form as may be set out in the Procedures.

[5021] If ASX gives notice to a Market Participant requiring that Market Participant to provide a report or certification under Rule [5020]:

- (a) ASX must specify in that notice the date and time by which the Market Participant is to provide the report or certification; and
- (b) the Market Participant must provide that report or certification to ASX within the time specified in the notice.

[5022] If ASX considers that the information contained in the report or certification warrants further investigation it may direct the Market Participant to do one or both of the following:

- (a) give to ASX or the independent expert further information which ASX considers appropriate having regard to Rule [6120]; or
- (b) require the Market Participant to cause the independent expert to submit a further report or certification covering further matters specified by ASX by a date and time specified by ASX.

[5023] If a Market Participant fails to comply with a requirement of, or direction by, ASX under Rules [5020], [5021] or [5022], ASX may appoint a suitably qualified independent expert to investigate the Market Participant and prepare a report or certification in a form and within a time determined by ASX.

[5024] The Market Participant must give all reasonable assistance required by the independent expert referred to in Rules [5020], [5022] or [5023] to prepare the report or certification and must at the request of the independent expert direct third parties to make available all information the independent expert requires.

[5025] An independent expert appointed by ASX under Rule [5023] is taken to be the Market Participant's attorney for the purpose of obtaining any information or documents from third parties which in the opinion of the independent expert or ASX are necessary for the independent expert to prepare the report or certification.

[5026] Unless ASX otherwise determines, the relevant Market Participant must pay the costs of the report or certification of the independent expert prepared under Rules [5020], [5022] or [5023] and bear any other costs incurred by it in respect of the report or certification.

## **SANCTIONS**

### **Enforcement actions for breach of rules**

[5100] If ASX considers that a Market Participant has contravened the Rules or breached a condition imposed by ASX under the Rules, ASX may take any action in accordance with the provisions of the ASX Enforcement and Appeals Rulebook.

### **Actions for breaches of Trading Permission Requirements**

[5110] If ASX reasonably considers that:

- (a) a Trading Participant is not complying with the Trading Permission Requirements; or
- (b) it is otherwise appropriate having regard to Rule [6120],

ASX may immediately suspend or withdraw the Trading Permission of a Market Participant in whole or in part, including in respect of:

- (c) one or more:
  - (i) Products;
  - (ii) parts of the Trading Platform;
- (d) a level of Throughput Capacity; or
- (e) Type 1 Client Access.

[5111] A suspension of the Trading Permission of a Market Participant by ASX under Rule [5110] will remain in force until ASX is satisfied that:

- (a) the Trading Participant complies, or will comply, with the Trading Permission Requirements; or

- (b) the suspension is no longer appropriate having regard to Rule [6120],  
(as applicable).

### **Actions for breaches of Operational Requirements**

[5120] If ASX reasonably considers that:

- (a) a Trading Participant is not complying with the Operational Requirements;  
or
- (b) it is otherwise appropriate having regard to Rule [6120],

ASX may do one or more of the following:

- (c) restrict or prohibit the submission of Trading Messages:
  - (i) containing one or more unique identifiers:
    - a. allocated by ASX under Rule [1300]; or
    - b. allocated by the Trading Participant under Rule [1301]; or
  - (ii) by means of one or more Open Interface Devices of the Trading Participant;
- (d) direct the Trading Participant to immediately suspend, limit or prohibit the submission of Trading Messages:
  - (i) containing one or more unique identifiers:
    - a. allocated by ASX under Rule [1300]; or
    - b. allocated by the Trading Participant under Rule [1301]; or
  - (ii) which are from a device or person to which or whom such unique identifier(s) referred to in (i) above has been allocated; or
- (e) take any other action as may be set out in the Procedures.

[5121] A restriction, prohibition or direction imposed, or any other action taken, under Rule 5120 will remain in force until ASX is satisfied that:

- (a) the Trading Participant complies, or will comply, with the Operational Requirements; or
- (b) the restriction, prohibition, direction or other action is no longer appropriate having regard to Rule [6120],  
  
(as applicable).

### **Actions for breaches of VolumeMatch Book Requirements**

[5130] If ASX reasonably considers that:

- (a) a Trading Participant is not complying with the VolumeMatch Book Requirements; or
- (b) it is otherwise appropriate, having regard to Rule [6120],

ASX may immediately suspend, limit or prohibit the conduct and/or all access to a Trading Participant's client and/or Non-Client VolumeMatch Book activities, or give direction(s) as ASX sees fit from time to time.

[5131] Any action taken (including for the avoidance of doubt, direction given) by ASX under Rule [5130] will remain in force for a minimum period as set out in the Procedures and until ASX is satisfied that:

- (a) the Trading Participant complies, or will comply, with its VolumeMatch Book Requirements; or
  - (b) the action is no longer appropriate, having regard to Rule [6120]; or
  - (c) the Trading Participant has been re-certified as set out in Rules [5020], [5022] or [5023] as to the Trading Participant's compliance with Rule [4206],
- (as applicable).

### **Actions for breaches of trading restrictions and limits for Derivative Market Contracts**

[5140] Where a Trading Participant has breached, or, where applicable, caused its Clearing Participant to breach, a Position Limit or an Exercise Limit or a restriction imposed under Rules [3400] to [3420], ASX may do any or all of the following in connection with the enforcement of those limits or restrictions:

- (a) direct the Trading Participant, or its Clearing Participant, to take, or not to take, a specified action;
- (b) take, or refrain from taking, any other action which ASX considers is appropriate having regard to Rule [6120]; and
- (c) request an Approved Clearing Facility to exercise its powers under the Clearing Rules.

### **Notice of actions taken by ASX under Rules [5110], [5120], [5130] or [5140]**

[5150] Where ASX takes action (including for the avoidance of doubt, gives a direction) under Rules [5110], [5120], [5130] or [5140]:

- (a) ASX will, as soon as practicable, notify the Trading Participant of the action taken by ASX; and
- (b) ASX may publish a market notice (or otherwise make an announcement or publication) detailing the action that has been taken, including the name of the Trading Participant(s) and any other information which ASX considers relevant to such action.

### **Suspension, termination and other actions against Market Participant for event of default**

[5160] If ASX considers that an event of default under Rule [5161] has occurred, or if Rule [5162] applies, ASX may take any or all of the following actions in respect of the Market Participant, in the name of (if appropriate) and at the expense of the Market Participant, in any order immediately or at any other time ASX determines, and without the need for any prior notice to or consent of the Market Participant or any other person:

- (a) cancel a Derivatives Market Transaction effected by the Market Participant which has not been reported to an Approved Clearing Facility for registration;
- (b) suspend the Market Participant's admission as a Market Participant;
- (c) subject to Rule [5201] terminate the Market Participant's admission as a Market Participant;
- (d) impose restrictions on the Market Participant's rights or privileges as a Market Participant; or
- (e) without prejudice to any other rights which ASX may have under the Rules, under statute, at law or in equity, take any other action, or take no action, or

direct the Market Participant to take any action or no action, in order to eliminate or minimise risk with respect to Market Transactions entered into by the Market Participant or which ASX considers appropriate for the protection of ASX, an Approved Clearing Facility, the Market or other Market Participants.

- [5161] ASX may regard any of the following events as an event of default by a Market Participant.
- (a) if the Market Participant is a Clearing Participant, the Market Participant ceases to be a Clearing Participant under the Clearing Rules and does not then comply with Rule [1003] and Schedule 1;
  - (b) if the Market Participant is a Clearing Participant, the Market Participant is suspended from being a Clearing Participant, or suspended from clearing certain categories of Market Transaction under the Clearing Rules and does not then comply with Rule [1003] and Schedule 1;
  - (c) if the Market Participant is not a Clearing Participant, the Market Participant does not comply with Rule [1003] and Schedule 1;
  - (d) the Market Participant fails to pay any amount due and payable to ASX or an Approved Clearing Facility or fails to perform any of its obligations to ASX or an Approved Clearing Facility or fails to comply with any reasonable direction, decision or requirement of ASX or an Approved Clearing Facility;
  - (e) the Market Participant indicates that it will or may suspend payment to ASX, an Approved Clearing Facility or to creditors;
  - (f) the Market Participant is or states that it is insolvent under administration, or ceases or indicates that it will or may cease to carry on business;
  - (g) the Market Participant becomes, or the Market Participant or any other person takes any step which might result in the Market Participant becoming, an externally-administered body corporate or an insolvent under administration (as those terms are defined in section 9 of the Corporations Act);
  - (h) any distress, execution or other process is levied or enforced or served upon or against any property of the Market Participant;
  - (i) 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 Market Participant or a related entity, in circumstances which are, in the opinion of ASX, material to the capacity of the Market Participant to meet its obligations to other Market Participants, ASX or an Approved Clearing Facility;
  - (j) the Market Participant does not have the level of capital required under Rules [8400] to [8431] (or fails to comply with any exemption under Rules [8420] to [8426]);
  - (k) the Market Participant no longer satisfies the criteria for admission as a Market Participant or fails to comply with any condition of admission as a Market Participant;
  - (l) the Market Participant made a wilful omission or misstatement in respect of a material matter prior to, or in connection with, its application for admission as a Market Participant;
  - (m) the Market Participant has failed to comply with any of Rules [5010] to [5013] or [5020] to [5026];
  - (n) the Market Participant has failed to comply with a determination made by an Old Tribunal (as defined in Rule [8000]) pursuant to the Old Australian



Securities Exchange Enforcement and Appeals Rulebook (as defined in Rule [8000]);

- (o) the Market Participant fails to comply with any action taken by ASX in accordance with Rule [5100] 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);
- (p) the Market Participant is suspended, expelled or terminated as a member or participant of any Australian or overseas derivatives, securities, commodity or stock exchange or market or any clearing house or clearing and/or settlement facility or is subject to sanctions imposed by an Australian or overseas regulatory authority; and
- (q) if the Market Participant is an individual, he or she dies.

[5162] If an event, or series of events whether related or not, occurs in relation to a Market Participant or a related entity of a Market Participant, which is not an event of default under Rule [5161], including without limitation:

- (a) the Market Participant fails to comply, or indicates that it will or may fail to comply with any of the Rules or Procedures or the terms of any agreement with ASX;
- (b) the Market Participant fails to comply, or indicates that it will or may fail to comply with any of the rules of, or the terms of any agreement with, an Approved Clearing Facility;
- (c) ASX is informed by another derivatives, securities, commodity or stock exchange or market or any clearing house or clearing and/or settlement facility that the Market Participant or a Related Body Corporate of the Market Participant is not complying with its obligations to that exchange, market, clearing house or clearing and/or settlement facility;
- (d) the Market Participant breaches Chapter 7 of the Corporations Act, or regulations made under that Chapter (as referred to in Corporations Regulation 7.2.07(b)(v)); or
- (e) the Market Participant breaches a condition on its Australian financial services licence (as referred to in Corporations Regulation 7.2.07(b)(vi)),

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

- (f) the capacity of the Market Participant to meet all its obligations to ASX, a related entity of ASX or an Approved Clearing Facility or other Market Participants;
- (g) the financial position of ASX, an Approved Clearing Facility or the Market Participant; or
- (h) the Market or an Underlying Market,

ASX may take any or all of the actions set out in Rule [5160] in relation to the Market Participant as if an event of default under Rule [5161] had occurred.

Amended 15/06/15

[5163] If ASX suspends a Market Participant's admission as a Market Participant under Rule [5160]:

- (a) the period of suspension will be the period that ASX considers necessary or desirable. ASX may extend the period of suspension if it considers an extension is necessary or desirable;

- (b) the Market Participant must not hold itself out as a Market Participant during a period of suspension; and
- (c) during a period of suspension, ASX may, pursuant to its powers under Rule [5160](c), terminate the admission of the Market Participant.

[5164] Where ASX takes action (including for the avoidance of doubt, gives a direction) under Rule [5160]:

- (a) ASX will, as soon as practicable, notify the Market Participant of the action taken by ASX, and its reasons for taking that action;
- (b) where the action involves the cancellation of a Market Transaction under Rule [5160](a), ASX will also notify the other Market Participant which was party to that Market Transaction of that cancellation, and may include in such notification its reasons for taking that action; and
- (c) ASX may, subject to Rule [5201] (in relation to termination), publish a market notice (or otherwise make an announcement or publication) detailing the action that has been taken, including the name of the Market Participant(s) and any other information which ASX considers relevant to such action.

[5165] Each Market Participant irrevocably appoints severally ASX, and every officer, employee, agent and other representative for the time being of ASX, at the option of ASX, to be the agent of the Market Participant and irrevocably authorises ASX and every officer, employee, agent and other representative for the time being of ASX, at the option of ASX, to do all acts and execute all documents on its behalf for the purpose of exercising the powers conferred on ASX by Rule [5160].

[5166] Without limiting Rules [6800] to [6802], none of ASX, its officers, employees, representatives, agents or contractors are liable to a Market 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 by Rule [5160].

[5167] Each Market Participant indemnifies and will keep indemnified ASX and its officers, employees, representatives, agents and contractors against all actions, proceedings, claims, demands, damages, costs, expenses and any other amounts against or incurred by any of ASX or its officers, employees, representatives, agents or contractors arising out of or in connection with any event of default under Rule [5161], any circumstances under Rule [5162] or any action taken by, or any inaction by, any of ASX or its officers, employees, representatives, agents or contractors under Rule [5160].

[5168] No person need enquire whether any action taken under Rule [5160] is properly or validly taken nor will a person be affected by any notice or claim that any action taken under Rule [5160] is improper or unnecessary.

[5169] Without limiting Rules [5500] or [5501], the rights, powers and remedies of ASX under Rules [5160] to [5168] in relation to a Market Participant survive the termination of the Market Participant's admission as a Market Participant.

## **APPEALS**

[5200] If a Market Participant is dissatisfied with a decision of ASX to:

- (a) issue an Enforcement Notice under Section 2 of the ASX Enforcement and Appeals Rulebook or any sanction imposed in the Enforcement Notice;

- (b) suspend the admission of the Market Participant under Rule [5160]; or
  - (c) terminate the admission of the Market Participant under Rule [5160],
- it may appeal to the Appeal Tribunal in accordance with the provisions of the ASX Enforcement and Appeals Rulebook.

[5201] ASX may not implement or announce a decision to:

- (a) take enforcement action against a Market Participant under Rule 2.5 of the ASX Enforcement and Appeals Rulebook; or
- (b) terminate a Market Participant's admission as a Market Participant under Rule [5160],

before the expiry of the time for giving a notice of appeal, or if a notice of appeal is given in accordance with the ASX Enforcement and Appeals Rulebook, before the appeal is determined.

[5202] Without limiting Rules [5160] or [5164], ASX may implement and announce a decision to suspend the admission of a Market Participant under Rule [5160], before the expiry of the time for giving a notice of appeal or before the appeal is determined.

## **SANCTIONS AGAINST MARKET PARTICIPANTS WHO ARE PARTNERSHIPS**

[5300] ASX may take any action under this Section 5 against a Market Participant which is a partnership in the name of the Market Participant without taking action against each partner in the partnership. Where the Market Participant is considered pursuant to this Section 5 to have contravened the Rules or breached a condition imposed by ASX under the Rules, each partner is jointly and severally liable to pay any penalty imposed and any other sum directed to be paid to ASX and to ensure that any other sanction imposed by ASX (or any Appeal Tribunal) is enforced and implemented.

## **TERMINATION OF TRADING PERMISSION OR ADMISSION OF SUBSTANTIALLY INACTIVE MARKET PARTICIPANTS**

[5400] Where ASX considers that a Market Participant has been:

- (a) substantially inactive in respect of a particular Product for a continuous period of 6 months, ASX may notify the Market Participant that it intends to terminate the Market Participant's Trading Permission in respect of that Product; or
- (b) substantially inactive for a continuous period of 6 months in respect of all Products for which ASX has given it Trading Permission, ASX may notify the Market Participant that it intends to terminate the Market Participant's admission.

[5401] For the purposes of Rules [5400] to [5404], in determining whether a Market Participant is "substantially inactive", ASX may:

- (a) in relation to a potential termination of the Market Participant's Trading Permission in respect of a Product, take into account the number of Market Transactions the Market Participant has entered into on a Trading Platform during that period in respect of that Product; or
- (b) in relation to a potential termination of the Market Participant's admission, take into account the number of Market Transactions the Market Participant

has entered into on a Trading Platform during that period in respect of all Products for which ASX has given it Trading Permission.

- [5402] On receipt of a notice given under Rule [5400], the Market Participant may make written submissions to ASX explaining why, in its view, the Market Participant's Trading Permission in respect of that Product or its admission (as applicable) should not be terminated. Any written submission must be received by ASX within 10 Business Days following receipt of the notice from ASX, unless ASX grants an extension in writing.
- [5403] Where no submission is received by ASX under Rule [5402], ASX may terminate the Market Participant's Trading Permission in respect of that Product or its admission (as applicable) following the end of the 10 Business Day period (or any extension) referred to in that Rule.
- [5404] Where a submission is received by ASX under Rule [5402], ASX may terminate the Market Participant's Trading Permission in respect of that Product or its admission (as applicable) if ASX is not satisfied that the Market Participant will cease to be substantially inactive within a further 20 Business Days following the receipt of the submission. If the Market Participant remains substantially inactive during that period, ASX may terminate the Market Participant's Trading Permission in respect of that Product or its admission (as applicable) following the end of that further period.

## **EFFECT OF TERMINATION ON OBLIGATIONS OF MARKET PARTICIPANT**

- [5500] Where a Market Participant ceases to be a Market Participant (including as a result of resignation or termination of the admission of the Market Participant) this does not affect any accrued rights which ASX, a Related Body Corporate of ASX or other Market Participants have against the Market Participant or any accrued obligations which the Market Participant has to ASX, a Related Body Corporate of ASX or to other Market Participants.
- [5501] Without limiting Rule [5500], after the Market Participant ceases to be a Market Participant under these Rules:
- (a) the Rules continue to apply and ASX will continue to have jurisdiction in respect of the Market Participant concerning any conduct or any failure to comply with the Rules which occurred before the cessation of the admission of the Market Participant, whether that conduct or failure was by the Market Participant or by any other person for whose conduct the Market Participant was responsible;
  - (b) the Market Participant continues to be bound by any indemnity given by the Market Participant under these Rules; and
  - (c) other Rules continue to apply in respect of the Market Participant to the extent required to give effect to paragraphs (a) and (b).

**End of Section. Next page is no. 601.**