

ASX REDUCING RED TAPE CONSULTATION ANNEXURES B – M

DETAILED RULE AND PROCEDURE CHANGES

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Annexure B

Proposed Changes to ASX Rules

SECTION 1 ACCESS TO THE MARKET

ADMISSION OF MARKET PARTICIPANTS

[1000] For an applicant to be eligible for admission as a Market Participant, ~~(other than a Principal Trader)~~ the applicant must:

- (a) lodge an application in the form prescribed by ASX ~~as set out in the Procedures;~~
- (b) be a body corporate carrying on business in its own right and not as ~~which is incorporated as a company or registered as a foreign company under the Corporations Act and not be applying in the capacity of~~ a trustee under a trust;
- (c) hold:
 - (i) unless such a licence is not required by the Corporations Act, an Australian Financial Services Licence which authorises the applicant to carry on its business as a Market Participant ~~(unless such a licence is not required by the Corporations Act); and~~
 - (ii) if the applicant is incorporated or carries on business in a place outside Australia, any licence or authorisation required under the law of that place for it to carry on its business as a Market Participant;
- (d) ~~satisfy ASX that it is~~ be of high business integrity. ~~In assessing whether an applicant is of high business integrity for the purposes of Rule [1000](d), but without limiting the discretion of ASX, ASX may have regard to the matters set out in the Procedures;~~
- (e) have adequate resources and processes to comply with ~~satisfy ASX, in the manner set out in the Procedures, that it has organisational competencies which are adequate for the performance of~~ its obligations as a Market Participant under these Rules;
- (f) have adequate resources and processes ~~satisfy ASX in the manner set out in the Procedures, that it has organisational competencies sufficient~~ to prevent any action or inaction which might ~~results~~ in a market for a Product not being both fair and orderly;
- (g) have adequate resources and processes ~~satisfy ASX, in the manner set out in the Procedures, that it has organisational competencies sufficient~~ to prevent any action or inaction which might ~~interferes~~ with the operational efficiency or proper functioning of the Trading Platform; and
- (h) ~~warrant to ASX that it is in compliance with the management requirements set out in the ASIC Market Integrity Rules;~~
- (i) ~~satisfy ASX that it has in place and will maintain~~ have adequate clearing arrangements in place in accordance with Rule [1003] and Schedule 1; ~~and~~
- (j) ~~if the applicant is applying to be admitted up to one year after the Effective Time (as defined in Section 8), satisfy ASX that it complies with the Capital Requirements (as defined in Section 8) (or any other requirements applicable in accordance with the conditions of any exemption from the Capital Requirements under Rules [8220] to [8226]).~~

For these purposes, “resources” include financial, technological and human resources and “processes” include management, supervision, training, business continuity and disaster recovery processes.

In assessing whether an applicant meets these requirements, ASX may have regard to the matters set out in the Procedures and to any other matters it considers appropriate.

Purpose of amendment:

ASX is proposing to align its admission requirements across the ASX and ASX 24 markets and the clearing and settlement facilities that service those markets. This will simplify the admission process for applicants applying for admission to multiple markets and/or facilities.

Participants have an ongoing obligation to comply with the admission requirements and so aligning the admission requirements will also help them to standardise their compliance frameworks across the various ASX markets and facilities.

ASX is proposing to remove the requirement in ASX Operating Rule [1000](b) for an applicant either to be incorporated as a company in Australia or to be registered as foreign company carrying on business in Australia. Instead it will only require that the applicant be a body corporate carrying on business in its own right and not as the trustee of a trust.

ASX is proposing to add a requirement that an applicant which is incorporated or carries on business in a place outside Australia, must hold any licence or authorisation required under the law of that place for it to carry on its business as a participant.

ASX is also proposing to delete ASX Operating Rule [1000](j). That rule was a transitional one and no longer has any force or effect (it having come to an end in 2011 when ASIC took over responsibility for supervising the capital requirements of ASX market participants).

[1001] ~~A Principal Trader may only enter into transactions on its own behalf. For an applicant to be eligible for admission as a Trading Participant which is a Principal Trader only the applicant must meet the requirements set out in Rule [1000] except that the application does not need to meet the requirements set out in Rule [1000](j) above.~~ An applicant proposing to be:

(a) admitted as a Principal Trader must be proposing only to conduct Market Transactions on its own behalf; and/or

(b) ~~If the applicant proposes to be~~ registered as a Market Maker under Rule [3440] ~~it~~ must hold an Australian Financial Services Licence which authorises it to carry on its business as a Market Participant or satisfy ASX that it is exempt from the requirement to hold such a licence.

Purpose of amendment:

ASX is proposing to make some minor amendments to ASX Operating Rule [1001] to remove some redundant material from the rule, including the reference to ASX Operating Rule [1000](j).

[1002] If an applicant is ~~a body corporate~~ incorporated or intends to carry on any part of its business as a Market Participant ~~resident~~ outside Australia, then ASX may impose additional requirements for it to be eligible for admission as a Market Participant, including (but not limited to) those ~~as~~ specified in the Procedures.

Purpose of amendment:

ASX is proposing to amend ASX Operating Rule [1002] to align its admission requirements for applicants that are incorporated, or that intend to carry on business as a participant, outside Australia across the ASX and ASX 24 markets and the clearing and settlement facilities that service those markets. This will simplify the admission process for applicants applying for admission to multiple markets and/or facilities.

The amendments will confer on ASX a power to impose requirements in relation to such applicants over and above those set out in the Procedures, strengthening the regime that ASX has for regulating overseas activities.

SECTION 5 MONITORING CONDUCT AND ENFORCING COMPLIANCE SANCTIONS

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

...

[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;

...

Purpose of amendment:

ASX is proposing to make a minor amendment to ASX Operating Rule [5162] for consistency with other rulebooks. The amendment will remove any doubt that a breach of the Procedures, if material and adverse, can be treated by ASX as an event of default under the ASX Operating Rules.

SECTION 6 GENERAL RULES

FOREIGN MARKET PARTICIPANTS AND OTHER MARKET PARTICIPANTS WITH OVERSEAS ACTIVITY

[6400] A Market Participant that proposes to locate or relocate any part of its business as a Market Participant (including, without limitation, any Open Interface Device or other means of communicating Trading Messages to ASX~~a computer or other device connected to an Open Interface Device~~), or to locate or relocate any Employees~~of its personnel engaged in its business as a Market Participant~~, outside Australia (the "Overseas Activity") must comply with the requirements set out in the Procedures.

[6401] If a Market Participant is incorporated outside Australia or conducts part of its business as a Market Participant outside Australia and:

- (a) any tax or duty of any kind would be liable to be paid by ASX, a Related Body Corporate of ASX or any other person bound by these Rules (each an "Entity");
- (b) the Market Participant would be required by any law or regulation to withhold payment of an amount or deduct a tax or duty of any kind from an amount payable by it to any Entity; or
- (c) an Entity or Entities are required by any law or regulation to withhold payment of an amount or deduct a tax or duty of any kind from an amount payable by the Entity or Entities,

in respect of any transaction or agreement between that Market Participant and any Entity or Entities, and that duty or tax would not be liable to be paid or would not be required to be withheld or deducted if the Market Participant were incorporated in Australia and conducting its business as a Market Participant wholly in Australia, then the Market Participant must disclose to each relevant Entity that the duty or tax may be payable, or withholding or deduction may have to be made, before the relevant transaction or agreement to which the duty or tax relates is entered into or instructions are accepted. The disclosure must be in writing and include the nature of the duty, tax or withholding and the amount of the likely duty, tax or withholding or the appropriate rate of duty or tax.

[6402] Without limiting any other indemnity given by a Market Participant under these Rules, each Market Participant indemnifies ASX in respect of any loss or damage caused to ASX as a result of a failure by that Market Participant to observe the requirements of Rules [6400] to [6402].

[6403] A Market Participant must ensure, even if part of its business as a Market Participant or some of its Employees are located outside Australia, that it has in place appropriate arrangements so that the Market Participant and ASX (and Related Bodies Corporate of ASX) can communicate with each other and receive each other's responses quickly on a day-to-day operational basis and so that the Market Participant can promptly comply with the Rules or a request of ASX (or a Related Body Corporate of ASX).

[6404] A Market Participant that is not incorporated or registered as a foreign company under the Corporations Act must:

- (a) appoint an agent, as approved by ASX, which is resident in Australia for service of process in Australia;
- (b) provide ASX as soon as practicable with a copy of any agent's acceptance of such appointment;
- (c) inform ASX of the intended effective date of any agent ceasing for any reason to act as agent for the Market Participant; and
- (d) if paragraph (c) applies, appoint as soon as practicable, and in any case before an outgoing agent ceases acting as agent for the Market Participant, a new agent, as approved by ASX.

Purpose of amendment:

As part of standardising the admission requirements for participants in its markets and facilities, ASX is proposing to introduce a uniform regime across those markets and facilities for offshoring and outsourcing. This regime will recognise and facilitate the increasing trend for participants to offshore some of their activities to regional centres of excellence and to use specialist outsourcers for particular activities. It will also ensure that ASX has an appropriate rule framework to regulate offshored and outsourced activities across all of its markets and facilities.

The new regime for offshoring and outsourcing will be based on the existing provisions in ASX and ASX 24 Operating Rules 1002 and 6400-6402 and the related Procedures, ASX Clear Operating Rules 3.8.1 and 4.19.1 – 4.19.4 and ASX Settlement Operating Rule 4.12.2, and will be standardised across all of ASX's markets and facilities.

To that end, ASX is proposing to make some minor changes to ASX Operating Rule [6400] to make it clear that it applies to the relocation of activities from one overseas location to another and for consistency with other rulebooks.

ASX is also proposing to add a new ASX Operating Rule [6403], equivalent to existing ASX Clear Operating Rule 4.19.2, requiring a participant to ensure, even if part of its business as a participant or some of its personnel are located outside Australia, that it has in place appropriate arrangements so that the participant and ASX can communicate with each other and receive each other's responses quickly on a day-to-day operational basis and so that the participant can promptly comply with the ASX Operating Rules or a request of ASX.

ASX is further proposing to add a new ASX Operating Rule [6404], equivalent to existing ASX Settlement Operating Rule 4.12.2, requiring a participant that is not incorporated or registered as a foreign company under the Corporations Act to appoint an agent for service of process.

PERSONS ACTING FOR MARKET PARTICIPANT

Responsibility for individuals involved in business

[6500] A Market Participant is responsible for all actions and omissions of [persons involved in its business as a Market Participant including, without limitation,](#) its Employees.

...

Purpose of amendment:

ASX is proposing to make an amendment to ASX Operating Rule [6500] for consistency with other rulebooks and to avoid any doubt that a participant is responsible for all actions and omissions of persons involve in its business as a participant, including third parties to whom it has outsourced relevant business activities.

[6513] Nothing in Rules [6510] to [6512] limits the persons whom ASX is entitled to assume are authorised by the Market Participant to sign documentation and to deal with trading issues in connection with the operation of its business as a Market Participant [or the operation of Rule \[6500\]](#).

Purpose of amendment:

ASX is proposing to amend ASX Operating Rule [6513] to make it clear that the provision of a list of authorised signatories does not affect the operation of Rule [6500].

SECTION 7 DEFINITIONS AND INTERPRETATION

DEFINITIONS

[7100] In these Rules and in the Procedures, unless the context otherwise requires:

...

"**Employee**" in relation to a Market Participant ~~includes~~ means a director, employee, officer, agent, representative, consultant or adviser of that Market Participant or any Related Body Corporate who is involved in its activities as, ~~or an independent contractor who acts for or by arrangement with a~~ Market Participant.

Purpose of amendment:

ASX is proposing to make minor amendments to the definition of "Employee" in ASX Operating Rule [7100] for consistency with other rulebooks and to recognise a common practice amongst participants where staff engaged in their business are employed through a related body corporate rather than by the participant itself.

SECTION 8 TRANSITIONAL PROVISIONS

Delete in its entirety.

Purpose of amendment:

ASX is proposing to delete section 8 of the ASX Operating Rules. Section 8 contains various rules to deal with the transition from the former regime where ASX had front-line responsibility for market supervision under the ASX Market Rules to the current one where ASIC has that responsibility under the ASIC Market Integrity Rules and ASX has responsibility for monitoring and enforcing compliance with its Operating Rules. Given the time that has passed since that regime has been in place, ASX no longer considers it necessary to maintain these transitional rules in its rulebook.

Annexure C

Proposed Changes to ASX Procedures

SECTION 1 ACCESS TO THE MARKET

ADMISSION OF MARKET PARTICIPANTS

Procedure 1000(d)

In order to satisfy ASX that it ~~is of high business integrity~~ meets Rule [1000](d), an applicant must satisfy one of the following:

(a) If the applicant is an authorised deposit-taking institution which has been granted authority to carry on a banking business in Australia under the Banking Act 1959, the applicant must confirm to ASX that it has in place a 'fit and proper' policy that meets the requirements of the Australian Prudential Regulation Authority Prudential Standard CPS 520.

The applicant must be able to provide evidence of that policy to ASX upon request at any time.

(b) If the applicant holds an Australian Financial Services Licence which authorises it to carry on business as a Market Participant, the applicant must confirm to ASX that it has in place measures to ensure its responsible managers are of good fame and character, as required by ASIC Regulatory Guide 105.33 and 2.162, which are also applied to any of its directors who are not responsible managers.

The applicant must be able to provide evidence of those measures to ASX upon request at any time.

(c) In any other case, ~~the~~an applicant must provide ~~the following information~~ a statutory declaration to ASX in relation to ~~itself the applicant~~ and ~~from each of its directors of the applicant confirming that~~ (with respect to both Australia and all other foreign jurisdictions):

~~(i)(a)~~ they have not been the subject of any previous bankruptcy, insolvency, receivership, administration, or similar event;

~~(ii)(b)~~ they have not been charged with or convicted of any ~~charges or convictions for any~~ offences relating to dishonesty, fraud, financial markets-related conduct, or money laundering;

~~(iii)(c)~~ they have not been the subject of any fines, civil penalties, banning, suspension or other disciplinary measures for financial markets-related conduct;

~~(iv)(d)~~ they have not been the subject of any disciplinary action or adverse mention in a report made by, or at the request of, any government or governmental authority or agency, the Commission, ASX, an Approved Clearing Facility, an Approved Settlement Facility, and any other exchange, market operator or clearing and/or settlement facility;

~~(v)(e)~~ they have not been refused ~~any refusal of~~ membership ~~or revocation of membership~~ of any financial markets-related, legal or accounting professional organisation or had such a membership revoked ~~body; and~~

~~(vi)(f)~~ they have not had ~~any refusal of~~ an application for Market Participant status (or equivalent status) on another exchange or market ~~operator refused~~ (with consent provided by the applicant for ASX to obtain details from the relevant exchange or market operator); and

whether in Australia or elsewhere, or, if that is not the case, a statement to that effect and a detailed explanation of the circumstances involved.

~~(g)~~The applicant must also consent ~~to~~for ASX ~~to obtain~~ing information on the credit worthiness of the applicant.

Purpose of amendment:

ASX is proposing to align its business integrity admission requirements across the ASX and ASX 24 markets and the clearing and settlement facilities that service those markets. This will simplify the admission process for applicants applying for admission to multiple markets and/or facilities.

The proposed changes to Procedure 1000(d) recognise that participants which are ADIs or hold an AFSL are already subject to business integrity regimes administered by APRA and ASIC respectively. Participants in the ASX market which are subject to those regimes will be able to meet ASX's business integrity requirements (in the same manner as ASX Clear and ASX Settlement participants currently can) simply by confirming their compliance with those regimes.

Procedure 1000(e)

In order to satisfy ASX that it meets Rule [1000](e), an applicant must provide to ASX a certification in the form prescribed by ASX from time to time that the applicant has the resources and processes in place to comply with its obligations under the Rules.

For these purposes, "resources" include financial, technological and human resources and "processes" include management, supervision, training, business continuity and disaster recovery processes.

In providing this certification to ASX the applicant must have regard to:

- the Rules;
- ASX Operating Rules Guidance Note 1 Admission as a Participant;
- ASX Operating Rules Guidance Note 9 Offshoring and Outsourcing;
- ASIC Regulatory Guide 104 Licensing: Meeting the general obligations;
- ASIC Regulatory Guide 105 Licensing: Organisational competence; and
- any other matters specified in the form prescribed by ASX for these purposes.

If required by ASX, the applicant must be able to demonstrate to the satisfaction of ASX, at any time, the basis on which the certification is or was provided.

~~In order to satisfy ASX that it has the organisational competencies which are adequate for the performance of its obligations as a Market Participant under these Rules an applicant (other than an applicant as a Principal Trader only) must provide to ASX:~~

- ~~(a) — a certification in the form prescribed by ASX from time to time (and signed by the directors and senior executive responsible for the compliance function of the applicant) that the applicant has developed processes and procedures that are reasonably designed and that when implemented will function, so as to achieve compliance by the applicant with the Rules. In providing this certification to ASX the applicant must be able to demonstrate to the satisfaction of ASX, at anytime, the basis on which the certification is provided, including the following:~~
- ~~(i) — the applicant has the necessary regulatory approvals to trade on ASX, and that the applicant's AFSL (or other regulatory approval) enables it to trade the Products that it intends to trade on ASX;~~
 - ~~(ii) — the applicant is aware of and understands the obligations contained in the Rules;~~
 - ~~(iii) — the applicant has a compliance program designed in accordance with the Australian Standard AS3806:2006 Compliance Programs to regularly assess and monitor its performance against the Rules, readily identify issues and provide continual improvements to its compliance program as required;~~
 - ~~(iv) — the applicant has, at an organisational level, determined the resource competencies (be they human or systems) required for the adequate performance of its obligations as a~~

Market Participant and that the applicant has a program that monitors performance against these competencies;

- ~~(v) the applicant has an initial and ongoing training program on the Rules (and any associated changes) for its Employees involved in its business as a Market Participant;~~
- ~~(vi) the applicant has awareness, understanding and can evidence its infrastructure arrangements and infrastructure change management processes (including comprehensive testing programs) specific to its access to the Trading Platform and its business as a Market Participant;~~
- ~~(vii) the applicant has appropriate security and access arrangements, controls and monitoring programs relating to its infrastructure arrangements specific to access its Open Interface to the ASX;~~
- ~~(viii) the applicant has processes in place to ensure it can, provide evidence and produce supporting documentation relevant to the design, implementation and functioning of its compliance program; and~~
- ~~(b) details of any service agreements, if the applicant is outsourcing functions to a third party which are material to the applicant's compliance with the Rules; and~~
- ~~(c) a statement by the directors of the applicant confirming that the applicant satisfies ASIC Market Integrity Rule 2.1.~~

In order to satisfy ASX that it has the organisational competencies which are adequate for the performance of its obligations as a Market Participant under these Rules an applicant as a Principal Trader only must provide to ASX:

- ~~(a) a certification in the form prescribed by ASX from time to time (and signed by the directors and senior executive responsible for the compliance function of the applicant) that:
 - ~~(i) the applicant or at least one director of the applicant is a Professional Investor or Sophisticated Investor (as defined in the Corporations Act 2001); and~~
 - ~~(ii) the applicant is aware of and understands the obligations contained in the Rules.~~~~
- ~~(b) proof that at least one director of the applicant:
 - ~~(i) possesses a minimum of five (5) years experience in a senior trading role, trading on ASX or a recognised exchange; or~~
 - ~~(ii) is currently actively trading on a recognised exchange in the capacity of Principal Trader (or equivalent status); and~~~~
- ~~(c) details of any service agreements, if the applicant is outsourcing functions to a third party which are material to the applicant's compliance with the Rules; and~~
- ~~(d) a statement by the directors of the applicant confirming that the applicant satisfies ASIC Market Integrity Rule 2.1.~~

Purpose of amendment:

ASX is proposing to streamline and simplify the form of certification that an applicant for admission to the ASX market is required to provide under Procedure 1000(e). Instead of requiring the detailed certifications currently contained in that Procedure, ASX will simply require an applicant to certify that it has the resources and processes to comply with its obligations under the ASX Operating Rules. ASX will provide guidance in a new ASX Operating Rules Guidance Note 1 *Admission as a Participant* on the resources and processes that a participant in the ASX market should have in place. Applicants will be required to have regard to that Guidance Note (as well as to ASX Operating Rules Guidance Note 9 *Offshoring and Outsourcing*, a draft of which is included in Annexure M of this consultation paper) in providing their certification.

ASX will finalise a draft of Guidance Note 1 once it has finalised the proposed changes to its admission requirements and will release the draft for public consultation prior to formally adopting it.

ASX is also proposing to remove the provisions imposing additional organisational competence requirements on principal traders. ASX believes it is appropriate and sufficient that principal traders give the same form of certification as other market participants confirming that they have the resources and processes to comply with their obligations under the ASX Operating Rules.

In addition, ASX is proposing to remove the requirement in Procedure 1000(e) that participants provide copies of material outsourcing agreements to it as part of the admission process. ASX's new Guidance Note 9 *Offshoring and Outsourcing* will outline in some detail its expectations in relation to offshoring and outsourcing arrangements, rendering it unnecessary for ASX to continue this practice.

Procedures 1000(f) and (g)

In order to satisfy ASX that it meets Rule [1000](f) and (g), an applicant must demonstrate to the satisfaction of ASX that:

- (a) it complies with the technical specifications prescribed by ASX from time to time;
- (b) it has arrangements for connectivity to the Trading Platform;
- (c) it will have, at all times, a nominated person readily available for ASX to contact with the requisite competency and authority to make decisions as a representative of the Market Participant regarding its trading; and
- (d) it has clearing arrangements in place, including connectivity to its Clearing Participant.

If requested by ASX, the applicant must be able to provide, at any time, details of its connectivity to the Trading Platform and its Clearing Participant, including a diagram showing the location(s) of infrastructure and details of lines, fibre and networks.

The applicant must also provide to ASX a copy of the written certifications or confirmations it has provided to ASIC, and confirmations that ASIC has provided to the applicant, under the ASIC Market Integrity Rules in respect of the applicant's Automated Order Processing system.

~~In order to satisfy ASX that it has the organisational competencies sufficient to prevent any action or inaction which results in a market for a Product not being both fair and orderly an applicant must demonstrate to the satisfaction of ASX:~~

- ~~(a) compliance with the technical specifications in the form prescribed by ASX from time to time;~~
- ~~(b) that the applicant has mechanism(s) for placing, amending and cancelling orders on the Trading Platform; and~~
- ~~(c) that the applicant has, at all times, a nominated person readily available for ASX to contact with the requisite competency and authority to make decisions as a representative of the Market Participant regarding its trading.~~

Procedure 1000(g)

~~In order to satisfy ASX that it has the organisational competencies sufficient to prevent any action or inaction which interferes with the operational efficiency or proper functioning of the Trading Platform an applicant must demonstrate to the satisfaction of ASX:~~

- ~~(a) compliance with the technical specifications in the form prescribed by ASX from time to time;~~
- ~~(b) that the applicant has arrangements for connectivity to the Trading Platform, including providing details of the location(s) of infrastructure, and details of lines, fibre and networks and that the applicant can evidence a plan of those arrangements to ASX at anytime;~~

~~(c) that the applicant has, at all times, a nominated person readily available for ASX to contact with the requisite competency and authority to make decisions as a representative of the Market Participant regarding its trading; and~~

~~(d) that the applicant has clearing arrangements in place, including connectivity to its Clearing Participant.~~

~~In addition, the applicant must provide to ASX a copy of the written certifications, annual notifications or further certifications it has provided to ASIC under the ASIC Market Integrity Rules in respect of the applicant's Automated Order Processing system.~~

Purpose of amendment:

These amendments are intended to remove the duplication currently in Procedures 1000(f) and (g).

Procedure 1002

If an applicant is ~~a body corporate~~ incorporated or [intends to carry on any part of its business as a Market Participant resident](#) outside Australia:

- (a) ASX ~~may require~~ ~~must be satisfied~~ that the [applicant body corporate](#) (or a Related Body Corporate) currently conducts trading operations which are regulated by a foreign derivatives or securities exchange or foreign regulatory authority acceptable to ASX;
- (b) ASX may require the [applicant body corporate](#) (or persons connected with the [applicant body corporate](#)) to give an additional undertaking or undertakings governed by Australian law in respect of any matter which ASX considers reasonable including, without limitation, undertakings as to:
 - (i) the amount of resources and number of Employees to be located in Australia ~~or, if operations are principally located outside Australia, any resources, disclosure or arrangements (including in relation to ASX of information) that are of the kind required by the Commission in respect of foreign providers of financial services to ensure maintenance of a fair and orderly market;~~
 - (ii) access by ASX to records required to be kept ~~by the body corporate~~ under these Rules;
 - (iii) foreign taxes that might be payable; and
 - (iv) the law governing the applicant's activities under the Rules and the applicant's submission to jurisdiction;
- (c) ASX may require the [applicant body corporate](#) to provide a legal opinion, from independent lawyers acceptable to ASX, and paid for by the applicant, which deals with matters required by ASX and which is acceptable to ASX; ~~and~~
- (d) ASX may require a performance bond in the form and substance acceptable to ASX; ~~and~~
- [\(e\) if the applicant proposes to conduct any Overseas Activity \(as defined in Rule \[6400\]\), ASX may require the applicant to notify ASX of the details of the proposed Overseas Activity and to demonstrate that the proposed Overseas Activity will comply with Procedure 6400.](#)

Purpose of amendment:

ASX is proposing to amend Procedure 1002 to align its wording with the changes proposed to ASX Operating Rule [1002], to broaden the discretions conferred on ASX under paragraphs (a) and (b)(i), and to clarify the relationship between Procedure 1002 and Procedure 6400.

...

ONGOING REQUIREMENTS

Procedure 1400(e)

A Market Participant must notify ASX of the following matters:

1. **Change of name or address**

A Market Participant must notify ASX in writing of the following changes before they become effective:

- (a) any change to ~~the Market Participant's~~ its name, or any name under which ~~the Market Participant~~ it carries on business as a Market Participant; or
- (b) any change to any address at which ~~the Market Participant~~ it carries on business as a Market Participant.

The notice must include full details of the change.

2. **Change of Directors, licence or authorisation and other details**

A Market Participant must notify ASX in writing:

...

- (b) immediately if:

...

- (iii) there is any other material change in information concerning ~~the~~ its business as a Market Participant from that previously provided to ASX.

3. **Regulatory action**

If a Market Participant is informed by the Commission or its delegates (or any other person authorised under the Corporations Act), an exchange, a market operator, a clearing and/or settlement facility or a regulatory body that action is being or may be taken by it against the Market Participant or any of its Employees, its delegates or an authorised person under the Corporations Act that relates in any way to its activities as a Market Participant, the Market Participant must notify ASX in writing on or before the next Business Day of full details of that information.

~~4. Notification of amount and period of compensation cover~~

~~Market Participants must, where the Market Participant acts for any person other than itself or a Related Body Corporate, give ASX via ASX Compliance Monitor within 105 Business Days:~~

- ~~(a) a copy of the certificate of insurance following the issue of a new professional indemnity (or equivalent) insurance policy or the renewal of an existing professional indemnity (or equivalent) insurance policy for which the Market Participant is an insured; or~~
- ~~(b) details of the Market Participant's compensation arrangements (other than professional indemnity insurance (or equivalent)) of which the Market Participant is the beneficiary which satisfies the compensation requirements of its Australian Financial Services Licence or equivalent licence requirements in a foreign jurisdiction; and~~
- ~~(c) if the Market Participant's compensation arrangements change, details of the new compensation arrangements.~~

~~5. Notification of claims~~

~~Market Participants must notify ASX via ASX Compliance Monitor within 5 Business Days of:~~

- ~~(a) any notification to its professional indemnity (or equivalent) insurer of any claim, potential claim or circumstance that might give rise to a claim; or~~
- ~~(b) if a Market Participant has alternative compensation arrangements notified to ASX under (e) or (f) above, any claim or circumstance of which it becomes aware that may result in the Market Participant seeking compensation under these arrangements.~~

~~6. Provision of further information~~

~~Market Participants must provide ASX with further information which ASX reasonably requests in relation to any insurance policy, compensation arrangement or actual or potential claim or circumstance notified to ASX under (g) or (h) above.~~

~~7. Change in financial year end or auditor~~

~~Market Participants must notify ASX of:~~

- ~~(a) any changes to a Market Participant's financial year end, within 5 Business Days of the change taking effect; and~~
- ~~(b) the appointment, removal or resignation of an auditor, no more than 5 Business Days after the event.~~

~~84. Self-Reporting~~

~~Note: Market Participants should also refer to Procedure 5000 for self-reporting requirements.~~

Purpose of amendment:

ASX is proposing to make some minor changes to Procedure 1400(e) to align the notification obligations of participants across the ASX and ASX 24 markets and the clearing and settlement facilities that service those markets. This will help participants in those markets and facilities to standardise their processes for notifying applicable information to ASX.

ASX is also proposing to remove the requirement for ASX market participants to notify it of their professional indemnity insurance requirements, any actual or potential claims on their professional indemnity insurance policies and other information about its insurance policies and compensation arrangements. The obligation for ASX market participants to carry professional indemnity insurance is imposed under the ASIC Market Integrity Rules applicable to the ASX market rather than under the ASX Operating Rules and it is no longer necessary for ASX to receive this information.

In addition, ASX is proposing to remove the requirement for ASX market participants to notify it of changes to their financial year end or auditor. The capital requirements for ASX market participants were transferred to ASIC in August 2011 and it is no longer necessary for ASX to receive this information.

SECTION 3 TRADING RULES

ORDERLY TRADING

Fair and orderly markets

Procedure 3111

A Trading Participant must notify ASX Market Control ~~immediately~~ by telephone if it is unable to transmit or receive Trading Messages.

Purpose of amendment:

This amendment corrects an inconsistency between Rule [3111] and Procedure 3111. Rule [3111] requires a Trading Participant to notify ASX “as soon as practicable” and consequently there is no need to include a timeframe in the Procedure. It also makes the Procedure consistent with ASX 24 Procedure 3111.

SECTION 4 EXECUTION, QUOTE DISPLAY AND REPORTING SERVICES

GENERAL RULES RELATING TO THE TRADING PLATFORM

Session States

Procedure 4706~~5~~

Where a Trading Participant effects a crossing in a Wholesale Loan Security in accordance with Rule [4706~~5~~] during all Session States other than the CSPA, System Maintenance and Close Session States, the Trading Participant must immediately report the crossing to the Trading Platform in conjunction with the condition code WH.

Where a Trading Participant effects a crossing in a Wholesale Loan Security in accordance with Rule [4706~~5~~] during the CSPA Session State, the Trading Participant must report the crossing to the Trading Platform immediately following the CSPA Session State in conjunction with the condition code WH.

Where a Trading Participant effects a crossing in a Wholesale Loan Security in accordance with Rule [4706~~5~~] during the System Maintenance and Close Session States, the Trading Participant must report the crossing to the Trading Platform in conjunction with the condition code WH no later than 15 minutes prior to the scheduled commencement of Open Session State on the next Trading Day (or on the same Trading Day, if the crossing is effected between midnight and the commencement of Open Session State on the Trading Day).

Purpose of amendment:

ASX is proposing to amend Procedure 4705 to correct a rule cross-reference error.

SECTION 5 MONITORING CONDUCT AND ENFORCING COMPLIANCE INFORMATION, MONITORING AND INVESTIGATION

Self-reporting

Procedure 5000

For the purposes of Rule [5000] the circumstances are as follows:

- (a) the Market Participant becomes aware that it has breached any of the Rules [or the Procedures](#) and that breach is significant;
- ...
- (c) ~~the Market Participant or any of its Employees is the subject of any regulatory or disciplinary action by any exchange, market operator, clearing and/or settlement facility, the Commission or any other regulatory authority (or if the Market Participant becomes aware that any Clearing Participant through which it clears Market Transactions or any of the Clearing Participant's Employees is the subject of any action of that type);~~
- ...
- (e) the Market Participant becomes aware or has reasonable grounds for suspecting the existence of any other event or circumstance which adversely affects or may adversely affect its financial position or solvency or its ability to comply with the Rules [or Procedures](#).

Purpose of amendment:

ASX is proposing to make minor amendments to Procedure 5000(a) and (e) for consistency with other rulebooks. The amendments will remove any doubt that a significant breach of the Procedures must be reported to ASX under Rule [5000].

ASX is also proposing to delete Procedure 5000(c). A market participant is required to notify ASX of intended regulatory action against it or its employees under Procedure 1400(e) and a separate notification under Procedure 5000(c) of the commencement of regulatory action is therefore not necessary. It is also not necessary for a market participant to notify ASX of regulatory action against its clearing participant or the employees of its clearing participant as the clearing participant will have its own obligation to notify ASX of such action.

SECTION 6 GENERAL RULES

FOREIGN MARKET PARTICIPANTS AND OTHER MARKET PARTICIPANTS WITH OVERSEAS ACTIVITY

Procedure 6400

For the purposes of Rule [6400], the requirements are as follows:

- (a) provide prior written notification to ASX including details of the proposed Overseas Activity;
- (b) obtain all necessary regulatory approvals from any relevant governmental agency or regulatory authority in Australia or elsewhere in respect of the Overseas Activity and provide a copy of those regulatory approvals to ASX;
- (c) comply with the directions of ASX and any relevant governmental agency or regulatory authority in Australia concerning the supervision of the Overseas Activity; and
- (d) not engage in Overseas Activity of a type which would result in ASX becoming subject to the jurisdiction of any relevant government agency or regulatory authority outside Australia without the prior written consent of ASX.

Note: This Procedure applies to ~~those~~ all Market Participants who ~~are incorporated and resident in Australia but~~ locate aspects of their activities as a Market Participant overseas, regardless of where they are incorporated or carry on business. ~~For Participants who are wholly outside Australia see the application process at Rule [1002].~~

Purpose of amendment:

ASX is proposing to amend Procedure 6400 to improve the way in which it operates with Procedure 1002 and to ensure there are no gaps in ASX's regime for regulating overseas activities.

SECTION 8 TRANSITIONAL PROVISIONS

Delete in its entirety.

Purpose of amendment:

As mentioned previously, ASX is proposing to delete section 8 of the ASX Operating Rules in its entirety. This consequently requires the deletion of Section 8 of the ASX Operating Rules Procedures.

Annexure D

Proposed Changes to ASX 24 Rules

SECTION 1 ACCESS TO THE MARKET

ADMISSION OF TRADING PARTICIPANTS

- [1000] For an applicant to be eligible for admission as a Trading Participant, ~~(other than a Principal Trader)~~ the applicant must:
- (a) lodge an application in the form prescribed by the Exchange ~~as set out in the Procedures;~~
 - (b) be a body corporate carrying on business in its own right and not as ~~which is incorporated as a company or registered as a foreign company under the Corporations Act and not be applying in the capacity of a trustee under of~~ a trust;
 - (c) hold:
 - (i) unless such a licence is not required by the Corporations Act, an Australian Financial Services Licence which authorises the applicant to carry on its business as a Trading Participant ~~(unless such a licence is not required by the Corporations Act); and~~
 - (ii) if the applicant is incorporated or carries on business in a place outside Australia, any licence or authorisation required under the law of that place for it to carry on its business as a Trading Participant;
 - (d) ~~satisfy the Exchange that it is~~ be of high business integrity. ~~In assessing whether an applicant is of high business integrity for the purposes of Rule [1000](d), but without limiting the discretion of the Exchange, the Exchange may have regard to the matters set out in the Procedures;~~
 - (e) have adequate resources and processes to comply with ~~satisfy the Exchange, in the manner set out in the Procedures, that it has organisational competencies which are adequate for the performance of~~ its obligations as a Trading Participant under these Rules;
 - (f) have adequate resources and processes ~~satisfy the Exchange in the manner set out in the Procedures, that it has organisational competencies sufficient~~ to prevent any action or inaction which might ~~results~~ in a market for a Product not being both fair and orderly;
 - (g) have adequate resources and processes ~~satisfy the Exchange, in the manner set out in the Procedures, that it has organisational competencies sufficient~~ to prevent any action or inaction which might ~~interferes~~ with the operational efficiency or proper functioning of the Trading Platform; and
 - ~~(h) — warrant to the Exchange that it is in compliance with the management requirements set out in the ASIC Market Integrity Rules;~~
 - (h) ~~satisfy the Exchange that it has in place and will maintain~~ have adequate clearing arrangements, in place including, where relevant, a Clearing Guarantee from a Guarantor Clearing Participant; ~~and~~
 - ~~(j) — if the applicant is applying to be admitted up to one year after the Effective Time (as defined in Section 8), satisfy the Exchange that it complies with the Capital Requirements (as defined in Section 8) (or any other requirements applicable in accordance with the conditions of any exemption from the Capital Requirements under Rules [8400] to [8431]).~~

For these purposes, “resources” include financial, technological and human resources and “processes” include management, supervision, training, business continuity and disaster recovery processes.

In assessing whether an applicant meets these requirements, the Exchange may have regard to the matters set out in the Procedures and to any other matters it considers appropriate.

Purpose of amendment:

ASX is proposing to align its admission requirements across the ASX and ASX 24 markets and the clearing and settlement facilities that service those markets. This will simplify the admission process for applicants applying for admission to multiple markets and/or facilities.

Participants have an ongoing obligation to comply with the admission requirements and so aligning the admission requirements will also help them to standardise their compliance frameworks across the various ASX markets and facilities.

ASX is proposing to remove the requirement in ASX 24 Operating Rule [1000](b) for an applicant either to be incorporated as a company in Australia or to be registered as foreign company carrying on business in Australia. Instead it will only require that the applicant be a body corporate carrying on business in its own right and not as the trustee of a trust.

ASX is proposing to add a requirement that an applicant which is incorporated or carries on business in a place outside Australia, must hold any licence or authorisation required under the law of that place for it to carry on its business as a participant.

ASX is also proposing to delete ASX 24 Operating Rule [1000](j). That rule was a transitional one and no longer has any force or effect (it having come to an end in 2011 when ASIC took over responsibility for supervising the capital requirements of ASX 24 market participants).

[1001] A ~~Principal Trader may only enter into transactions on its own behalf. For a~~ applicant proposing to be eligible for admission admitted as a ~~Trading Participant which is a~~ Principal Trader ~~only the applicant must be proposing only to conduct Market Transactions on its own behalf~~ meet the requirements set out in Rule [1000] except that the application does not need to meet the requirements set out in Rule [1000](j) above.

Purpose of amendment:

ASX is proposing to make some minor amendments to ASX 24 Operating Rule [1001] to remove some redundant material from the rule, including the reference to ASX 24 Operating Rule [1000](j).

[1002] If an applicant is ~~a body corporate~~ incorporated or intends to carry on any part of its business as a Trading Participant resident outside Australia, the Exchange may impose additional requirements for it to be eligible for admission as a Trading Participant, including (but not limited to) those ~~as~~ specified in the Procedures.

Purpose of amendment:

ASX is proposing to amend ASX 24 Operating Rule [1002] to align its admission requirements for applicants that are incorporated, or that intend to carry on business as a participant, outside Australia across the ASX and ASX 24 markets and the clearing and settlement facilities that service those markets. This will simplify the admission process for applicants applying for admission to multiple markets and/or facilities.

The amendments will confer on ASX a power to impose requirements in relation to such applicants over and above those set out in the Procedures, strengthening the regime that ASX has for regulating overseas activities.

SECTION 5 MONITORING CONDUCT AND ENFORCING COMPLIANCE SANCTIONS

Suspension, termination and other actions against Trading Participant for event of default

...

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

- (a) the Trading 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 the Exchange;

...

Purpose of amendment:

ASX is proposing to make a minor amendment to ASX 24 Operating Rule [5162] for consistency with other rulebooks. The amendment will remove any doubt that a breach of the Procedures, if material and adverse, can be treated by ASX as an event of default under the ASX 24 Operating Rules.

SECTION 6 GENERAL RULES

FOREIGN TRADING PARTICIPANTS AND OTHER TRADING PARTICIPANTS WITH OVERSEAS ACTIVITY

- [6400] A Trading Participant that proposes to locate or relocate any part of its business as a Trading Participant (including, without limitation, any Open Interface Device or other means of communicating Trading Messages to the Exchange~~a computer or other device connected to an Open Interface Device~~), or to locate or relocate any Employees~~of its personnel engaged in its business as a Trading Participant~~, outside Australia (the "Overseas Activity") must comply with the requirements set out in the Procedures.
- [6401] If a Trading Participant is incorporated outside Australia or conducts part of its business as a Trading Participant outside Australia and:
- (a) any tax or duty of any kind would be liable to be paid by the Exchange, a Related Body Corporate of the Exchange or any other person bound by these Rules (each an "Entity");
 - (b) the Trading Participant would be required by any law or regulation to withhold payment of an amount or deduct a tax or duty of any kind from an amount payable by it to any Entity; or
 - (c) an Entity or Entities are required by any law or regulation to withhold payment of an amount or deduct a tax or duty of any kind from an amount payable by the Entity or Entities,
- in respect of any transaction or agreement between that Trading Participant and any Entity or Entities, and that duty or tax would not be liable to be paid or would not be required to be withheld or deducted if the Trading Participant were incorporated in Australia and conducting its business as a Trading Participant wholly in Australia, then the Trading Participant must disclose to each relevant Entity that the duty or tax may be payable, or withholding or deduction may have to be made, before the relevant transaction or agreement to which the duty or tax relates is entered into or instructions are accepted. The disclosure must be in writing and include the nature of the duty, tax or withholding and the amount of the likely duty, tax or withholding or the appropriate rate of duty or tax.
- [6402] Without limiting any other indemnity given by a Trading Participant under these Rules, each Trading Participant indemnifies the Exchange in respect of any loss or damage caused to the Exchange as a result of a failure by that Trading Participant to observe the requirements of Rules [6400] to [6402].
- [6403] A Trading Participant must ensure, even if part of its business as a Trading Participant or some of its Employees are located outside Australia, that it has in place appropriate arrangements so that the Trading Participant and the Exchange (and Related Bodies Corporate of the Exchange) can communicate with each other and receive each other's responses quickly on a day-to-day operational basis and so that the Trading Participant can promptly comply with the Rules or a request of the Exchange (or a Related Body Corporate of the Exchange).
- [6404] A Trading Participant that is not incorporated or registered as a foreign company under the Corporations Act must:
- (a) appoint an agent, as approved by the Exchange, which is resident in Australia for service of process in Australia;
 - (b) provide the Exchange as soon as practicable with a copy of any agent's acceptance of such appointment;
 - (c) inform the Exchange of the intended effective date of any agent ceasing for any reason to act as agent for the Trading Participant; and
 - (d) if paragraph (c) applies, appoint as soon as practicable, and in any case before an outgoing agent ceases acting as agent for the Trading Participant, a new agent, as approved by the Exchange.

Purpose of amendment:

As part of standardising the admission requirements for participants in its markets and facilities, ASX is proposing to introduce a uniform regime across those markets and facilities for offshoring and outsourcing. This regime will recognise and facilitate the increasing trend for participants to offshore some of their activities to regional centres of excellence and to use specialist outsourcers for particular activities. It will also ensure that ASX has an appropriate rule framework to regulate offshored and outsourced activities across all of its markets and facilities.

The new regime for offshoring and outsourcing will be based on the existing provisions in ASX and ASX 24 Operating Rules 1002 and 6400-6402 and the related Procedures, ASX Clear Operating Rules 3.8.1 and 4.19.1 – 4.19.4 and ASX Settlement Operating Rule 4.12.2, and will be standardised across all of ASX's markets and facilities.

To that end, ASX is proposing to make some minor changes to ASX 24 Operating Rule [6400] to make it clear that it applies to the relocation of activities from one overseas location to another and for consistency with other rulebooks.

ASX is also proposing to add a new ASX 24 Operating Rule [6403], equivalent to existing ASX Clear Operating Rule 4.19.2, requiring a participant to ensure, even if part of its business as a participant or some of its personnel are located outside Australia, that it has in place appropriate arrangements so that the participant and ASX can communicate with each other and receive each other's responses quickly on a day-to-day operational basis and so that the participant can promptly comply with the ASX 24 Operating Rules or a request of ASX.

ASX is further proposing to add a new ASX 24 Operating Rule [6404], equivalent to existing ASX Settlement Operating Rule 4.12.2, requiring a participant that is not incorporated or registered as a foreign company under the Corporations Act to appoint an agent for service of process.

PERSONS ACTING FOR TRADING PARTICIPANT

Responsibility for individuals involved in business

[6500] A Trading Participant is responsible for all actions and omissions of [persons involved in its business as a Trading Participant including, without limitation](#), its Employees.

...

Purpose of amendment:

ASX is proposing to make an amendment to ASX 24 Operating Rule [6500] for consistency with other rulebooks and to avoid any doubt that a participant is responsible for all actions and omissions of persons involved in its business as a participant, including third parties to whom it has outsourced relevant business activities.

[6513] Nothing in Rules [6510] to [6512] limits the persons whom the Exchange is entitled to assume are authorised by the Trading Participant to sign documentation and to deal with trading issues in connection with the operation of its business as a Trading Participant [or the operation of Rule \[6500\]](#).

Purpose of amendment:

ASX is proposing to amend ASX 24 Operating Rule [6513] to make it clear that the provision of a list of authorised signatories does not affect the operation of Rule [6500].

...

RECORDS, INFORMATION, RETURNS AND RECORDING

Requirement for Records and Information

~~[6705] — A Responsible Executive must ensure that all information which the Responsible Executive gives to the Exchange is complete, accurate and not misleading. If the Responsible Executive becomes aware that information which he or she has given previously to the Exchange was incomplete, inaccurate or misleading, the Responsible Executive must promptly notify the Exchange in writing.~~

Purpose of amendment:

ASX is proposing to delete ASX 24 Operating Rule [6705]. It was an error. There are no Responsible Executive requirements in the ASX 24 Operating Rules.

SECTION 7 DEFINITIONS AND INTERPRETATION

DEFINITIONS

[7100] In these Rules and in the Procedures, unless the context otherwise requires:

...

"**Employee**" in relation to a Trading Participant ~~includes~~ means a director, employee, officer, agent, representative, consultant or adviser of that Trading Participant or any Related Body Corporate who is involved in its activities as, ~~or an independent contractor who acts for or by arrangement with a~~ Trading Participant.

Purpose of amendment:

ASX is proposing to make minor amendments to the definition of "Employee" in ASX 24 Operating Rule [7100] for consistency with other rulebooks and to recognise a common practice amongst participants where staff engaged in their business are employed through a related body corporate rather than by the participant itself.

SECTION 8 TRANSITIONAL PROVISIONS

Delete in its entirety.

Purpose of amendment:

ASX is proposing to delete section 8 of the ASX 24 Operating Rules. Section 8 contains various rules to deal with the transition from the former regime where ASX had front-line responsibility for market supervision under the former SFE Operating Rules to the current one where ASIC has that responsibility under the ASIC Market Integrity Rules and ASX has responsibility for monitoring and enforcing compliance with its Operating Rules. Given the time that has passed since that regime has been in place, ASX no longer considers it necessary to maintain these transitional rules in its rulebook.

Annexure E

Proposed Changes to ASX 24 Procedures

SECTION 1 ACCESS TO THE MARKET

ADMISSION OF TRADING PARTICIPANTS

Procedure 1000(d)

In order to satisfy the Exchange that it ~~is of high business integrity~~ meets Rule [1000](d), an applicant must satisfy one of the following:

(a) If the applicant is an authorised deposit-taking institution which has been granted authority to carry on a banking business in Australia under the Banking Act 1959, the applicant must confirm to the Exchange that it has in place a 'fit and proper' policy that meets the requirements of the Australian Prudential Regulation Authority Prudential Standard CPS 520.

The applicant must be able to provide evidence of that policy to the Exchange upon request at any time.

(b) If the applicant holds an Australian Financial Services Licence which authorises it to carry on business as a Trading Participant, the applicant must confirm to the Exchange that it has in place measures to ensure its responsible managers are of good fame and character, as required by ASIC Regulatory Guide 105.33 and 2.162 which are also applied to any of its directors who are not responsible managers.

The applicant must be able to provide evidence of those measures to the Exchange upon request at any time.

(c) In any other case, ~~the~~an applicant must provide ~~the following information~~ a statutory declaration to the Exchange in relation to itself ~~the applicant~~ and from each of its directors ~~of the applicant~~ confirming that ~~(with respect to both Australia and all other foreign jurisdictions):~~

- (i) they have not been the subject of any previous bankruptcy, insolvency, receivership, administration, or similar event;
- (ii) they have not been charged with or convicted of any ~~charges or convictions for any~~ offences relating to dishonesty, fraud, financial markets-related conduct, or money laundering;
- (iii) they have not been the subject of any fines, civil penalties, banning, suspension or other disciplinary measures for financial markets-related conduct;
- (iv) they have not been the subject of any disciplinary action or adverse mention in a report made by, or at the request of, any government or governmental authority or agency, the Commission, ASX, an Approved Clearing Facility, an Approved Settlement Facility, and any other exchange, market operator or clearing and/or settlement facility;
- (v) they have not been refused ~~any refusal of~~ membership ~~or revocation of membership~~ of any financial markets-related, legal or accounting professional organisation or had such a membership revoked ~~body; and~~
- (vi) any refusal of ~~they have not had~~ an application for Trading Participant status (or equivalent status) on another exchange or market ~~operator refused~~ ~~(with consent provided by the applicant for the Exchange to obtain details from the relevant exchange or market operator); and~~

whether in Australia or elsewhere, or, if that is not the case, a statement to that effect and a detailed explanation of the circumstances involved.

• The applicant must also consent ~~to~~ for the Exchange ~~to obtaining~~ information on the credit worthiness of the applicant.

Purpose of amendment:

ASX is proposing to align its business integrity admission requirements across the ASX and ASX 24 markets and the clearing and settlement facilities that service those markets. This will simplify the admission process for applicants applying for admission to multiple markets and/or facilities.

The proposed changes to Procedure 1000(d) recognise that participants which are ADIs or hold an AFSL are already subject to business integrity regimes administered by APRA and ASIC respectively. Participants in the ASX 24 market which are subject to those regimes will be able to meet ASX's business integrity requirements (in the same manner as ASX Clear and ASX Settlement participants currently can) simply by confirming their compliance with those regimes.

Procedure 1000(e)

In order to satisfy the Exchange that it meets Rule [1000](e), an applicant must provide to the Exchange a certification in the form prescribed by the Exchange from time to time that the applicant has the resources and processes in place to comply with its obligations under the Rules.

For these purposes, "resources" include financial, technological and human resources and "processes" include management, supervision, training, business continuity and disaster recovery processes.

In providing this certification to the Exchange the applicant must have regard to:

- the Rules;
- ASX 24 Operating Rules Guidance Note 1 Admission as a Participant;
- ASX 24 Operating Rules Guidance Note 9 Offshoring and Outsourcing;
- ASIC Regulatory Guide 104 Licensing: Meeting the general obligations;
- ASIC Regulatory Guide 105 Licensing: Organisational competence; and
- any other matters specified in the form prescribed by the Exchange for these purposes.

If required by the Exchange, the applicant must be able to demonstrate to the satisfaction of the Exchange, at any time, the basis on which the certification is or was provided.

~~In order to satisfy the Exchange that it has the organisational competencies which are adequate for the performance of its obligations as a Trading Participant under these Rules an applicant (other than an applicant as a Principal Trader only) must provide to the Exchange:~~

- ~~a certification in the form prescribed by the Exchange from time to time (and signed by the directors and senior executive responsible for the compliance function of the applicant) that the applicant has developed processes and procedures that are reasonably designed and that when implemented will function, so as to achieve compliance by the applicant with the Rules. In providing this certification to the Exchange the applicant must be able to demonstrate to the satisfaction of the Exchange, at anytime, the basis on which the certification is provided, including the following:~~
 - ~~the applicant has the necessary regulatory approvals to trade on the Exchange, and that the applicant's AFSL (or other regulatory approval) enables it to trade the Products that it intends to trade on the Exchange;~~
 - ~~the applicant is aware of and understands the obligations contained in the Rules;~~
 - ~~the applicant has a compliance program designed in accordance with the Australian Standard AS3806:2006 Compliance Programs to regularly assess and monitor its~~

~~performance against the Rules, readily identify issues and provide continual improvements to its compliance program as required;~~

- ~~○ the applicant has, at an organisational level, determined the resource competencies (be they human or systems) required for the adequate performance of its obligations as a Market Participant and that the applicant has a program that monitors performance against these competencies;~~
- ~~○ the applicant has an initial and ongoing training program on the Rules (and any associated changes) for its Employees involved in its business as a Market Participant;~~
- ~~○ the applicant has awareness, understanding and can evidence its infrastructure arrangements and infrastructure change management processes (including comprehensive testing programs) specific to its access to the Trading Platform and its business as a Trading Participant;~~
- ~~○ the applicant has appropriate security and access arrangements, controls and monitoring programs relating to its infrastructure arrangements specific to access its Open Interface to the Exchange;~~
- ~~○ the applicant has processes in place to ensure it can, provide evidence and produce supporting documentation relevant to the design, implementation and functioning of its compliance program; and~~
- ~~details of any service agreements, if the applicant is outsourcing functions to a third party which are material to the applicant's compliance with the Rules.~~

~~In order to satisfy the Exchange that it has the organisational competencies which are adequate for the performance of its obligations as a Trading Participant under these Rules an applicant as a Principal Trader only must provide to the Exchange:~~

- ~~a certification in the form prescribed by the Exchange from time to time (and signed by the directors and senior executive responsible for the compliance function of the applicant) that:~~
 - ~~○ the applicant or at least one director of the applicant is a Professional Investor or Sophisticated Investor (as defined in the Corporations Act 2001); and~~
 - ~~○ the applicant is aware of and understands the obligations contained in the Rules.~~
- ~~proof that at least one director of the applicant:~~
 - ~~○ possesses a minimum of five (5) years experience in a senior trading role, trading on the Exchange or a recognised exchange; or~~
 - ~~○ is currently actively trading on a recognised exchange in the capacity of Principal Trader (or equivalent status); and~~
- ~~details of any service agreements, if the applicant is outsourcing functions to a third party which are material to the applicant's compliance with the Rules.~~

Purpose of amendment:

ASX is proposing to streamline and simplify the form of certification that an applicant for admission is required to provide under Procedure 1000(e). Instead of requiring the detailed certifications currently contained in that Procedure, ASX will simply require an applicant to certify that it has the resources and processes to comply with its obligations under the ASX Operating Rules. ASX will provide guidance in a new ASX 24 Operating Rules Guidance Note 1 *Admission as a Participant* on the resources and processes that a participant in the ASX market should have in place. Applicants will be required to have regard to that Guidance Note (as well as to ASX 24 Operating Rules Guidance Note 9 *Offshoring and Outsourcing* , a draft of which is included in Annexure M of this consultation paper) in providing their certification.

ASX will finalise a draft of Guidance Note 1 once it has finalised the proposed changes to its admission requirements and will release the draft for public consultation prior to formally adopting it.

ASX is also proposing to remove the provisions imposing additional organisational competence requirements on principal traders. ASX believes it is appropriate and sufficient that principal traders give the same form of certification as other trading participants confirming that they have the resources and processes to comply with their obligations under the ASX 24 Operating Rules.

In addition, ASX is proposing to remove the requirement in Procedure 1000(e) that participants provide copies of material outsourcing agreements to it as part of the admission process. ASX's new Guidance Note 9 *Offshoring and Outsourcing* will outline in some detail its expectations in relation to offshoring and outsourcing arrangements, rendering it unnecessary for ASX to continue this practice.

Procedures 1000(f) and (g)

In order to satisfy the Exchange that it meets Rule [1000](f) and (g), an applicant must demonstrate to the satisfaction of the Exchange that:

- (a) it complies with the technical specifications prescribed by the Exchange from time to time;
- (b) it has arrangements for connectivity to the Trading Platform;
- (c) it will have, at all times, a nominated person readily available for the Exchange to contact with the requisite competency and authority to make decisions as a representative of the Trading Participant regarding its trading; and
- (d) it has clearing arrangements in place, including connectivity to its Clearing Participant.

If requested by the Exchange, the applicant must be able to provide, at any time, details of its connectivity to the Trading Platform and its Clearing Participant, including a diagram showing the location(s) of infrastructure and details of lines, fibre and networks.

~~In order to satisfy the Exchange that it has the organisational competencies sufficient to prevent any action or inaction which results in a market for a Product not being both fair and orderly an applicant must demonstrate to the satisfaction of the Exchange:~~

- ~~• Compliance with the technical specifications in the form prescribed by the Exchange from time to time;~~
- ~~• That the applicant has mechanism(s) for placing, amending and cancelling orders on the Trading Platform; and~~
- ~~• The applicant has, at all times, a nominated person readily available for the Exchange to contact with the requisite competency and authority to make decisions as a representative of the Trading Participant regarding its trading.~~

Procedure 1000(g)

~~In order to satisfy the Exchange that it has the organisational competencies sufficient to prevent any action or inaction which interferes with the operational efficiency or proper functioning of the Trading Platform an applicant must demonstrate to the satisfaction of the Exchange:~~

- ~~• Compliance with the technical specifications in the form prescribed by the Exchange from time to time;~~
- ~~• The applicant has arrangements for connectivity to the Trading Platform, including providing details of the location(s) of infrastructure, and details of lines, fibre and networks and that the applicant can evidence a plan of those arrangements to the Exchange at anytime;~~
- ~~• The applicant has, at all times, a nominated person readily available for the Exchange to contact with the requisite competency and authority to make decisions as a representative of the Trading Participant regarding its trading; and~~
- ~~• The applicant has clearing arrangements in place, including connectivity to its Clearing Participant.~~

Purpose of amendment:

These amendments are intended to remove the duplication currently in Procedures 1000(f) and (g).

Procedure 1002

If an applicant is ~~a body corporate~~ incorporated or intends to carry on any part of its business as a Trading Participant ~~resident~~ outside Australia:

- (a) ~~The Exchange~~ may require ~~must be satisfied~~ that the applicant ~~body corporate~~ (or a Related Body Corporate) currently conducts trading operations which are regulated by a foreign derivatives or securities exchange or foreign regulatory authority acceptable to the Exchange;
- (b) ~~The Exchange~~ may require the applicant ~~body corporate~~ (or persons connected with the applicant ~~body corporate~~) to give an additional undertaking or undertakings governed by Australian law in respect of any matter which the Exchange considers reasonable or in the interest of the Exchange including, without limitation, undertakings as to:
 - (i) the amount of resources and number of Employees to be located in Australia ~~or, if operations are principally located outside Australia, any resources, disclosure or arrangements (including in relation to the Exchange) that are of the kind required by the Commission in respect of foreign providers of financial services to ensure maintenance of a fair and orderly market;~~
 - (ii) access by the Exchange to records required to be kept ~~by the body corporate~~ under these Rules;
 - (iii) foreign taxes that might be payable; and
 - (iv) the law governing the applicant's activities under the Rules and the applicant's submission to jurisdiction;
- (c) ~~The Exchange~~ may require the applicant ~~body corporate~~ to provide a legal opinion, from independent lawyers acceptable to the Exchange, and paid for by the applicant, which deals with matters required by the Exchange and which is acceptable to the Exchange; ~~and~~
- (d) ~~The Exchange~~ may require a performance bond in the form and substance acceptable to the Exchange; ~~and~~
- (e) if the applicant proposes to conduct any Overseas Activity (as defined in Rule [6400]), the Exchange may require the applicant to notify ASX of the details of the proposed Overseas Activity and to demonstrate that the proposed Overseas Activity will comply with Procedure 6400.

Purpose of amendment:

ASX is proposing to amend Procedure 1002 to align its wording with the changes proposed to ASX 24 Operating Rule [1002], to broaden the discretions conferred on ASX under paragraphs (a) and (b)(i), and to clarify the relationship between Procedure 1002 and Procedure 6400.

...

ONGOING REQUIREMENTS

Procedure 1400(e)

A Trading Participant must notify the Exchange of the following matters:

1. Change of name or address

A Trading Participant must notify the Exchange in writing of the following changes before they become effective:

- (a) any change to ~~the Trading Participant's~~ its name, or any name under which ~~the Trading Participant~~ it carries on business as a Trading Participant; or
- (b) any change to any address at which ~~the Trading Participant~~ it carries on business as a Trading Participant.

The notice must include full details of the change.

2. Change of Directors, licence or authorisation and other details

A Trading Participant must notify the Exchange in writing:

...

- (b) immediately if:

...

- (iii) there is any other material change in information concerning ~~the~~ its business as a Trading Participant's ~~business~~ from that previously provided to the Exchange.

The notice must include full details of the change.

3. Regulatory action

If a Trading Participant is informed by the Commission or its delegates (or any other person authorised under the Corporations Act), an exchange, a market operator, a clearing and/or settlement facility or a regulatory body that action is being or may be taken by it against the Trading Participant or any of its Employees, its delegates or an authorised person under the Corporations Act that relates in any way to its activities as a Trading Participant, the Trading Participant must notify the Exchange in writing on or before the next Business Day of full details of that information.

4. Self-reporting

Note: Trading Participants should also refer to Procedure 5000 for self-reporting requirements.

~~Notification of amount and period of compensation cover~~

~~Trading Participants must, where the Trading Participant acts for any person other than itself or a Related Body Corporate, give the Exchange via ASX Compliance Monitor within 5 Business Days:~~

- ~~(a) a copy of the certificate of insurance following the issue of a new professional indemnity (or equivalent) insurance policy or the renewal of an existing professional indemnity (or equivalent) insurance policy for which the Trading Participant is an insured; or~~
- ~~(b) details of the Trading Participant's compensation arrangements (other than professional indemnity insurance (or equivalent)) of which the Trading Participant is the beneficiary which satisfies the compensation requirements of its Australian Financial Services Licence or equivalent licence requirements in a foreign jurisdiction; and~~
- ~~(c) if the Trading Participant's compensation arrangements change, details of the new compensation arrangements.~~

~~Notification of claims~~

~~Trading Participants must notify the Exchange via ASX Compliance Monitor within 5 Business Days of:~~

- ~~(a) any notification to its professional indemnity (or equivalent) insurer of any claim, potential claim or circumstance that might give rise to a claim; or~~
- ~~(b) if a Trading Participant has alternative compensation arrangements notified to the Exchange under Notification of amount and period of compensation claim (a) or (b) above, any claim or circumstance of which it becomes aware that may result in the Trading Participant seeking compensation under those arrangements.~~

Provision of other information

~~Trading Participants must provide the Exchange with further information which the Exchange reasonably requests in relation to any insurance policy, compensation arrangement or actual or potential claim or circumstance notified to the Exchange under (a) or (b) above.~~

Purpose of amendment:

ASX is proposing to make some minor changes to Procedure 1400(e) to align the notification obligations of participants across the ASX and ASX 24 markets and the clearing and settlement facilities that service those markets. This will help participants in those markets and facilities to standardise their processes for notifying applicable information to ASX.

ASX is also proposing to remove the requirement for ASX 24 market participants to notify it of their professional indemnity insurance requirements, any actual or potential claims on their professional indemnity insurance policies and other information about its insurance policies and compensation arrangements. The obligation for ASX market participants to carry professional indemnity insurance is imposed under the ASIC Market Integrity Rules applicable to the ASX 24 market rather than under the ASX 24 Operating Rules and it is no longer necessary for ASX to receive this information.

SECTION 5 MONITORING CONDUCT AND ENFORCING COMPLIANCE INFORMATION, MONITORING AND INVESTIGATION

Self-~~R~~-reporting

Procedure 5000

For the purposes of Rule [5000] the circumstances are as follows:

- (a) the Trading Participant becomes aware that it has breached any of the Rules or the Procedures and that breach is significant;
- ...
- (c) ~~[deleted]the Trading Participant or any of its Employees is the subject of any regulatory or disciplinary action by any exchange, market operator, clearing and/or settlement facility, the Commission or any other regulatory authority (or if the Trading Participant becomes aware that any Clearing Participant through which it clears Market Transactions or any of the Clearing Participant's Employees is the subject of any action of that type);~~
- ...
- (e) the Trading Participant becomes aware or has reasonable grounds for suspecting the existence of any other event or circumstance which adversely affects or may adversely affect its financial position or solvency or its ability to comply with the Rules or Procedures;

Purpose of amendment:

ASX is proposing to make minor amendments to Procedure 5000(a) and (e) for consistency with other rulebooks. The amendments will remove any doubt that a significant breach of the Procedures must be reported to ASX under Rule [5000].

ASX is also proposing to delete Procedure 5000(c). A trading participant is required to notify ASX of intended regulatory action against it or its employees under Procedure 1400(e) and a separate notification under Procedure 5000(c) of the commencement of regulatory action is therefore not necessary. It is also not necessary for a trading participant to notify ASX of regulatory action against its clearing participant or the employees of its clearing participant as the clearing participant will have its own obligation to notify ASX of such action.

SECTION 6 GENERAL RULES

Foreign Trading Participants and other ~~Market-Trading~~ Participants with Overseas Activity

Procedure 6400

For the purposes of Rule [6400], the requirements are as follows:

- (a) provide prior written notification to the Exchange including details of the proposed Overseas Activity;
- (b) obtain all necessary regulatory approvals from any relevant governmental agency or regulatory authority in Australia or elsewhere in respect of the Overseas Activity and provide a copy of those regulatory approvals to the Exchange;
- (c) comply with the directions of the Exchange and any relevant governmental agency or regulatory authority in Australia concerning the supervision of the Overseas Activity; and
- (d) not engage in Overseas Activity of a type which would result in the Exchange becoming subject to the jurisdiction of any relevant government agency or regulatory authority outside Australia without the prior written consent of the Exchange.

Note: This Procedure applies to ~~those~~ all Trading Participants who ~~are incorporated and resident in Australia but~~ locate aspects of their activities as a Trading Participant overseas, regardless of where they are incorporated or carry on business. ~~For Participants who are wholly outside Australia see the application process at Rule [1002].~~

Purpose of amendment:

ASX is proposing to amend Procedure 6400 to improve the way in which it operates with Procedure 1002 and to ensure there are no gaps in ASX's regime for regulating overseas activities.

SECTION 8 TRANSITIONAL PROVISIONS

Delete in its entirety.

Purpose of amendment:

As mentioned previously, ASX is proposing to delete section 8 of the ASX 24 Operating Rules in its entirety. This consequently requires the deletion of Section 8 of the ASX 24 Operating Rules Procedures.

Annexure F

Proposed Changes to ASX Clear Rules

SECTION 1 INTRODUCTION AND GENERAL RULES

This section deals with:

...

(b) the application and binding effect of these Rules on Participants ~~and Responsible Executives~~;

...

...

1.3 PROCEDURES

1.3.1 ASX Clear may approve Procedures

ASX Clear may from time to time approve written Procedures relating to the operations of ASX Clear, the conduct of ~~Regulated Persons~~ Participants and the structure and operation of electronic communications between ASX Clear and ~~Regulated Persons~~ Participants.

...

1.3.3 Changes to Procedures

ASX Clear may approve changes to the Procedures from time to time and must give such notice as is reasonable in the circumstances to ~~Regulated Persons~~ Participants of any changes to the Procedures before those changes take effect.

...

1.13 GOVERNING LAW

1.13.1 Governing law of contracts and agreements

All contracts or agreements between ASX Clear or a Related Body Corporate of ASX Clear and a ~~Regulated Person~~ Participant which are constituted by the Rules or entered into under the Rules or as contemplated by the Rules are governed by the laws of New South Wales.

1.18 FEES AND OTHER CHARGES

1.18.1 ASX Clear to determine fees

ASX Clear may determine fees to be paid by Participants in connection with the admission of Participants, ~~including the recognition of its Responsible Executives~~, access to and use of the Clearing Facility, ASX Clear's regulatory functions, its facilities and any other services operated or provided by ASX Clear or a Related Body Corporate of ASX Clear in connection with these Rules. ~~ASX Clear may also determine fees to be paid by the Responsible Executive in connection with exams and accreditation.~~ The fees, and any change to those fees, will take effect from the time notified by ASX Clear to Participants.

1.18.2 Late fees

ASX Clear may impose additional fees where a Participant ~~or Responsible Executive~~ has failed to pay a fee determined under Rule 1.18.1 by the time specified or to perform an obligation under these Rules by the time required under these Rules.

1.18.3 Payment of fees

A Participant ~~or Responsible Executive~~ must pay the fees determined under Rule 1.18.1 (and any late fees imposed under Rule 1.18.2) by the times and in the manner determined by ASX Clear and notified by ASX Clear to Participants ~~or Responsible Executives (as applicable)~~.

...

1.22 ANNUAL REVIEW OF THE CLEARING SYSTEM

1.22.1 ASX Clear to conduct annual review

ASX Clear must require an independent auditor to conduct an annual review of the Clearing System and that review must comprise the matters specified in the Procedures.

1.22.2 Copy of audit certificate to be provided to ~~Regulated Person~~ Participant

If a ~~Regulated Person~~ Participant requests that ASX Clear provide a copy of any audit certificate arising from an annual review under Rule 1.22.1, ASX Clear must, without charge, provide a copy of the audit certificate to the ~~at Regulated Person~~ Participant within 1 calendar month of:

- (a) ASX Clear receiving the audit certificate; or
- (b) the request,

whichever is the later.

1.22.3 ~~Regulated Person~~ Participant may request other review of the Clearing System

If a ~~Regulated Person~~ Participant gives notice to ASX Clear requesting an audit certificate in relation to any review of the Clearing System other than an annual review under Rule 1.22.1:

- (a) the ~~Regulated Person~~ Participant must in the notice undertake to pay any fee for that service which ASX Clear may notify to Participants from time to time; and
- (b) ASX Clear must request an independent auditor to conduct the requested review and supply an audit certificate in relation to the review to the ~~at Regulated Person~~ Participant as soon as reasonably practicable.

1.22.4 No other right to inspect ASX Clear records

Except as expressly provided in these Rules, no ~~Regulated Person~~ Participant has any right of access to, or right to inspect, ASX Clear's Records.

1.22.5 ~~Regulated Person~~ Participant to accept review by auditor

Each ~~Regulated Person~~ Participant must accept and treat a review conducted by ASX Clear's auditor under this Section as if that review were conducted by the ~~at Regulated Person's~~ Participant's own auditor.

Purpose of amendment:

The proposed changes to ASX Clear Operating Rules Section 1 come about as a consequence of the proposed removal of the requirement for participants in ASX Clear to nominate 'responsible executives' and the consequential deletion of the definition of 'Regulated Person'. All references in Section 1 to a 'Regulated Person' should now simply refer to a 'Participant'.

SECTION 2 DEFINITIONS AND INTERPRETATION

2.10 DEFINITIONS AND INTERPRETATION

2.10.1 Definitions used in the Rules

...

“Controller” means in relation to a Participant, a person who controls the Participant.:

Note: For these purposes, “control” has the same meaning as in section 50AA of the Corporations Act (Rule 2.2.1).

- ~~(a) a person holding 20% of the total votes attached to voting shares of an applicant or a Participant or a person who, together with Related Parties, holds 20% of such votes; or~~
- ~~(b) a person who has the power to control the Participant or applicant Participant, whether that power is direct or indirect or is, or can be, exercised as a result of, by means of, in breach of, or by revocation of, trusts, relevant agreements and practices, or any of them, and whether or not they are enforceable;~~

~~but for the purposes of Rules 4.1.1, 4.7, 4.9, 4.16, 4.17.1 and 4.22 does not include an entity if:~~

- ~~(c) the entity, a holding company of the entity, or a subsidiary of the entity through which the entity has an interest in the applicant or Participant is an entity listed on ASX, or any other Australian market licensee or a Recognised Overseas Stock Exchange; or~~
- ~~(d) ASX Clear is satisfied that it has received undertakings under Rule 4.22 or 4.16.1 from another entity or entities which are Controllers in the corporate group to which the first entity belongs, such that ASX Clear does not require the first entity to also be a Controller for the purposes of the Rules.~~

...

“Prescribed Person” means, in relation to a Participant:

- ~~(a) an Employee, a director, a partner, an Affiliate or Responsible Executive of the Participant;~~
- ~~(b) a Controller of the Participant or a Related Body Corporate of that Controller;~~
- ~~(c) the Immediate Family of a person referred to in paragraphs (a) or (b);~~
- ~~(d) a Family Company and a Family Trust of a person referred to in paragraphs (a) to (c); and~~
- ~~(e) where a Participant or a person referred to in paragraphs (a) to (d) is a body corporate, any body corporate or other entity controlled by that body corporate.~~

...

“Regulated Person” means ~~a Participant or a Responsible Executive.~~

...

“Responsible Executive” means ~~at any time, in relation to a Participant, an individual who is shown as having executive responsibility for the supervision and control of all or part of the business of that Participant in the copy of the Participant’s management structure provided to ASX Clear or who is otherwise notified to ASX Clear from time to time as having that responsibility.~~

Purpose of amendment:

ASX is proposing to remove the 'responsible executive' requirements from the ASX Clear Operating Rules. This includes deleting the definition of 'Responsible Executive' from ASX Clear Operating Rule 2.10.1.

This deletion will require a consequential deletion of the definition of 'Regulated Person' and the substitution of the term 'Participant' for 'Regulated Person' wherever it currently appears in the ASX Clear Operating Rules.

ASX is proposing to delete the definition of "Prescribed Person" as it is no longer used in the ASX Clear Operating Rules.

ASX is also proposing to modify the definition of "Controller" and tie it back to the definition of "control" in the Corporations Act. This is part of simplifying and harmonising the requirements for participants in the ASX Clear and ASX Clear (Futures) facilities to notify ASX of a change in control.

SECTION 3 PARTICIPATION IN THE CLEARING FACILITY

3.1 APPLICATION FOR PARTICIPATION

3.1.1 Application process

Subject to Rule 3.1.3A, ASX Clear will admit an applicant as a Direct Participant or a General Participant, subject to any conditions imposed under Rule 3.1.4, if the applicant:

- (a) applies to ASX Clear by completing ~~the an~~ application in the form prescribed by ASX~~set out in the Procedures~~;
- (b) satisfies the Admission Requirements; and
- (c) pays to ASX Clear the relevant application fee determined by ASX Clear.

Note: A Participant will be admitted with authority to clear categories of Market Transaction. See Rule 3.1.4 for the ability of ASX Clear to impose standard conditions specifying the categories of Market Transaction for which Participants are authorised to clear through ASX Clear.

Purpose of amendment:

ASX is proposing to remove the prescribed application form for admission as an ASX Clear participant from the Procedures and simply to make it available on the ASX website. This requires a minor change to ASX Clear Operating Rule 3.1.1(a).

...

3.1.3 ASX Clear to determine application within reasonable time

Subject to Rule 3.1.3A, ASX Clear will use all reasonable endeavours to make its decision whether to accept or reject an application for admission as a Participant within a reasonable time following the receipt of the application.

3.1.3A Admission as a Participant in ASX Clear's discretion

The decision as to whether to grant admission as a Participant is at the absolute discretion of ASX Clear. ASX Clear may grant or refuse admission without giving any reasons.

Purpose of amendment:

ASX is proposing to add a new ASX Clear Operating Rule 3.1.3A to remove any doubt that admission to the ASX Clear facility is at the absolute discretion of ASX.

...

3.2 ADMISSION REQUIREMENTS

3.2.1 General requirements for admission

For an applicant to be eligible to be admitted as a Participant the applicant must:

- (a) be a body corporate ~~incorporated under the Corporations Act or registered as a foreign company under the Corporations Act, carrying on business in its own right and not and not be applying in its capacity~~ as a trustee of ~~any~~ trust;

- (b) if the applicant is incorporated or ~~resident~~ carrying on business outside Australia, comply with Rule 4.19.42;
- (c) hold:
 - (i) unless such a licence is not required by the Corporations Act, an Australian financial services licence which authorises the applicant to carry on its business as a Participant; and
 - (ii) if the applicant is incorporated or carries on business in a place outside Australia, any licence or authorisation required under the law of that place for it to carry on its business as a Participant;
- (d) ~~satisfy ASX Clear that it meets~~ the business integrity requirements of this Section;
- (e) ~~satisfy ASX Clear that it meets~~ the management organisational requirements of this Section;
- (f) ~~satisfy ASX Clear that it has facilities, procedures, personnel and financial resources which are adequate for the performance by the applicant of its obligations as a Participant under these Rules, including without limitation, meeting~~ meet the technical and performance requirements of this Section;
- ~~(g) comply with the business connection requirements of this Section;~~
- ~~(g)h~~ satisfy ASX Clear that it complies with meet the capital regime requirements in Section 5;
- ~~(h)i~~ have insurance in place which complies with the requirements of Rule 4.3;
- ~~(i)~~ if the applicant seeks to be authorised to clear Options Market Transactions and/or OTC Options Market Transactions but is not or does not seek to be authorised to clear Cash Market Transactions associated with those Options Market Transactions, appoint a Participant which is authorised to clear the Cash Market Transactions and enter into, and maintain, a Clearing Agreement with that other Participant; and
- ~~(j)k~~ if the applicant is not itself able to settle Cash Market Transactions in an Approved Settlement Facility, appoint a Settlement Participant and maintain a Settlement Agreement with that Settlement Participant; ~~and~~
- ~~(l) comply with any condition imposed under Rules 3.1.4, 22.7.3 or 23.7.3.~~

Purpose of amendment:

ASX is proposing to align its admission requirements across the ASX and ASX 24 markets and the clearing and settlement facilities that service those markets. This will include deleting some redundant provisions from ASX Clear Operating Rule 3.2.1, including the organisational competence requirements in current paragraph (f) (which will be subsumed in the organisational requirements in paragraph (e) and ASX Clear Operating Rule 3.5.1 below) and current paragraphs (g) and (l).

Aligning ASX's admission requirements will simplify the admission process for applicants applying for admission to multiple ASX markets and/or facilities.

Participants have an ongoing obligation to comply with the admission requirements and so aligning the admission requirements will also help them to standardise their compliance frameworks across the various ASX markets and facilities.

...

3.4 BUSINESS INTEGRITY REQUIREMENTS

3.4.1 Applicant to have high business integrity

For an applicant to be eligible for admission as a Participant, the applicant must ~~satisfy ASX Clear that it is~~ be of high business integrity. Without limiting the discretion of ASX Clear, in assessing whether the applicant is of high business integrity, ASX Clear may have regard to the matters set out in the Procedures.

Purpose of amendment:

ASX is proposing some minor drafting amendments to ASX Clear Operating Rule 3.4.1.

3.5 ~~MANAGEMENT~~ ORGANISATIONAL REQUIREMENTS

3.5.1 Applicant to meet ~~management~~ organisational requirements

The ~~management~~ organisational requirements of this Section are that the applicant must have adequate resources and processes to comply with its obligations as a Participant under these Rules.:

For these purposes, “resources” include financial, technological and human resources and “processes” include management, supervision, training, business continuity and disaster recovery processes.

In assessing whether an applicant meets these requirements, ASX Clear may have regard to the matters set out in the Procedures and to any other matters it considers appropriate.

- ~~(a) — the applicant must have appropriate supervisory policies and procedures, and meet any standards prescribed by ASX Clear in the Procedures, to ensure compliance by the applicant with these Rules and the provisions of the Corporations Act that apply in relation to its activities as a Participant;~~
- ~~(b) — each Responsible Executive of the applicant must satisfy the requirements in Rule 4.22;~~
- ~~(c) — ASX Clear must have no reason to believe that any Employee or other person who is or will be involved in the activities of the applicant as a Participant or (in the case of a body corporate) any director or Controller is not of good fame and character and high business integrity, having regard to Rule 4.22.3 or, if ASX Clear considers they are not, the applicant must address that to the satisfaction of ASX Clear;~~
- ~~(d) — unless ASX Clear accepts alternative arrangements or undertakings, each Responsible Executive must have undertaken to ASX Clear to cause the Participant to comply with and be bound by the Rules, directions, decisions and requirements of ASX Clear. An undertaking to be given by a Responsible Executive under this clause relates only to that part of the Participant’s business which is identified in accordance with the Rules as being under the Responsible Executive’s supervision; and~~
- ~~(e) — each Responsible Executive must have also undertaken to ASX Clear to comply with and be bound by the Rules, directions, decisions and requirements of ASX Clear, to the extent necessary in connection with that part of the Participant’s business which is identified in accordance with the Rules as being under the Responsible Executive’s supervision.~~

Purpose of amendment:

ASX is proposing to align its organisational admission requirements across the ASX and ASX 24 markets and the clearing and settlement facilities that service those markets. This will simplify the admission process for applicants applying for admission to multiple markets and/or facilities.

ASX is also proposing to remove the 'responsible executive' requirements from the ASX Clear Operating Rules, rendering current paragraphs (b), (d) and (e) of ASX Clear Operating Rule 3.5.1 no longer necessary.

Paragraph (c) of ASX Clear Operating Rule 3.5.1 is also not necessary, given the business integrity requirements in Rule 3.4.

...

3.8 FOREIGN APPLICANTS INCORPORATED OR CARRYING ON BUSINESS OUTSIDE AUSTRALIA

3.8.1 Power of ASX to impose additional admission requirements ~~Where an applicant is incorporated or resident outside Australia~~

If an applicant is incorporated or intends to carry on any part of its business as a Participant resident outside Australia, then ASX may impose additional requirements for it to be eligible for admission as a Participant, including (but not limited to) those specified in the Procedures.:

- ~~(a) ASX Clear must be satisfied that the applicant (or a Related Body Corporate) currently conducts clearing operations which are regulated by a foreign clearing and settlement facility, a foreign financial market or a foreign regulatory authority acceptable to ASX Clear; or~~
- ~~(b) ASX Clear must be satisfied that the applicant is:
 - ~~(i) a clearing and settlement facility which holds an Australian CS Facility licence; or~~
 - ~~(ii) operates overseas as a clearing and settlement facility in accordance with the legal requirements of that jurisdiction and ASX Clear considers the applicant to be adequately regulated in that jurisdiction; and~~~~
- ~~(c) ASX Clear may require the applicant (or persons connected with the applicant) to give an additional undertaking or undertakings governed by Australian law in respect of any matter which ASX Clear considers reasonable or in the interest of the public or ASX Clear including, without limitation, undertakings as to:
 - ~~(i) the amount of resources and number of personnel to be located in Australia;~~
 - ~~(ii) access by ASX Clear to records required to be kept by the Participant under these Rules or the Corporations Act;~~
 - ~~(iii) foreign taxes that might be payable;~~
 - ~~(iv) whether the law of the applicant's incorporation would recognise protections which are substantially equivalent to those afforded by Australian law to clients' money and property in a winding-up of the applicant; and~~
 - ~~(v) the ranking of creditors on a winding-up of the applicant; and~~~~
- ~~(d) ASX Clear may require the applicant to provide a legal opinion, from independent lawyers acceptable to ASX Clear, and paid for by the applicant, which deals with matters required by ASX Clear and which is acceptable to ASX Clear.~~

Purpose of amendment:

ASX is proposing to align its admission requirements for applicants that are incorporated, or that intend to carry on business as a participant, outside Australia across the ASX and ASX 24 markets and the clearing and settlement facilities that service those markets. This will simplify the admission process for applicants applying for admission to multiple markets and/or facilities.

To align with the ASX and ASX 24 Operating Rules, the particular requirements applicable to applicants that are incorporated, or that intend to carry on business as a participant, outside Australia will be removed from ASX Clear Operating Rule 3.8.1 and relocated to the Procedures. A provision will also be added to ASX Clear Operating Rule 3.8.1 conferring on ASX a power to impose requirements in relation to such applicants over and above those set out in the Procedures, strengthening the regime that ASX has for regulating overseas activities.

...

3.13 EFFECT OF RESIGNATION OR TERMINATION ON OBLIGATIONS

3.13.3 ~~Certain obligations to continue following resignation or termination of Regulated Person who is not a Participant~~[\[Deleted\]](#)

~~After a Regulated Person, other than a Participant, ceases to be a Regulated Person under these Rules:~~

- ~~(a) the Rules continue to apply and ASX Clear will continue to have jurisdiction in respect of the Regulated Person concerning any conduct or any failure to comply with the Rules which occurred before the Regulated Person ceased to be a Regulated Person, whether that conduct or failure was by the Regulated Person or by any other person for whose conduct the Regulated Person was responsible;~~
- ~~(b) the Regulated Person continues to be bound by any indemnity given by the Regulated Person under these Rules; and~~
- ~~(c) other Rules continue to apply in respect of the Regulated Person to the extent required to give effect to paragraphs (a) and (b).~~

Purpose of amendment:

ASX is proposing to delete ASX Clear Operating Rule 3.13.3. It only operates in relation to responsible executives (a regulated person other than a participant) and therefore is no longer required, given the proposed removal of the 'responsible executive' requirements from the ASX Clear Operating Rules.

SECTION 4 RIGHTS AND OBLIGATIONS OF PARTICIPANTS

This Section sets out various rights and obligations of Participants ~~and Responsible Executives~~.

4.1 PARTICIPANTS ONGOING COMPLIANCE

4.1.1 General compliance

A Participant must at all times:

...

- (f) ~~ensure that each of its Responsible Executives complies with and demonstrates compliance with any continuing education requirements as prescribed by ASX Clear. ASX Clear will set out any continuing education requirements and the means of demonstrating compliance with those requirements in the Procedures;~~[\[deleted\]](#)

...

- (m) [\[deleted\]](#) ~~comply with the management requirements of this Section;~~
(n) [\[deleted\]](#) ~~comply with the representative requirements of this Section;~~
(o) [\[deleted\]](#) ~~comply with the dealing requirements of this Section;~~

...

Purpose of amendment:

ASX is proposing to amend ASX Clear Operating Rule 4.1.1 to delete the redundant reference to 'responsible executives' in the box that precedes it and also to delete references to other rules and sections that have been, or are proposed to be, deleted.

...

4.3 INSURANCE REQUIREMENTS

4.3.1 Obligation to have insurance

The insurance requirements of this Section are that:

- (a) subject to Rule 4.3.2 every Participant must where the Participant acts for any person other than itself or a Related Body Corporate take out and maintain, at all times, a professional indemnity (or equivalent) insurance policy that the Participant determines (acting reasonably) to be adequate, having regard to the nature and extent of the business carried on by the Participant in connection with its business as a Participant and the responsibilities and risks assumed or which may be assumed by the Participant in connection with that business [and retain a copy of the certificate evidencing the insurance](#);
- (b) the professional indemnity (or equivalent) insurance must include insurance against a breach of duty it owes in a professional capacity, whether owed in contract or otherwise at law, arising from any act or omission of the Participant and its Employees;
- (c) ~~the Participant must notify ASX Clear in writing within 10 Business Days following the issue of a new professional indemnity (or equivalent) insurance policy or the renewal of an existing professional indemnity (or equivalent) insurance policy which covers its activities as a Participant. Details should include:~~
- (i) ~~the amount of cover which the Participant has under this Rule 4.3.1;~~

- ~~(ii) the date on which the cover became effective; and~~
- ~~(iii) the date on which the cover will expire;~~
- ~~(d) the Participant must at the same time give ASX Clear a copy of the certificate of insurance;~~
- ~~(e)~~ in relation to any liability or potential liability of the type referred to in this Rule 4.3.1, a Participant must immediately notify ASX Clear of any notification to its insurer of any claim, potential claim or circumstance that might give rise to a claim, that relates in any way to its activities as a Participant and must include the following details:
 - (i) any circumstance which is likely to give rise to a claim or potential claim against the Participant;
 - (ii) the receipt of a notice from any person of any intention to make a claim or potential claim against the Participant; and
 - (iii) the details of any claim, potential claim or circumstance against the Participant including the gross contingent liability, the net contingent liability, the full name of the Participant's insurer and the date the Participant notified its insurer of the claim, potential claim or circumstance.
- ~~(f)~~ a Participant must also advise ASX Clear of any other matter which ASX Clear requires in relation to any insurance policy maintained under this Rule 4.3.1.

4.3.2 Insurance with Related Body Corporate

If the insurance referred to in Rule 4.3.1 is provided by a Related Body Corporate, the Participant must ~~provide ASX Clear with the following information by no later than 10 Business Days after the issue or renewal of the insurance (or at any other time if requested by ASX Clear):~~

- ~~(a) the name of the Related Body Corporate and a copy of evidence sufficient to establish that it is a Related Body Corporate; and~~
- ~~(b) receive confirmation from the Related Body Corporate that it is the insurer or the self-insurer covering and indemnifying the Participant against the liabilities referred to in Rule 4.3.1 and retain a copy of the confirmation certificate evidencing the insurance.~~

Purpose of amendment:

ASIC recently notified the market of proposed changes to the Market Integrity Rules removing the requirement for ASX market participants to notify ASIC of specified details of their professional indemnity (PI) insurance cover. The purpose behind the changes was to reduce the administrative burden on market participants.

ASX likewise is proposing to remove the requirement for ASX Clear participants to notify ASX of details of their PI insurance cover and to provide to ASX copies of their certificates of PI insurance. ASX will retain the general requirement under ASX Clear Operating Rule 4.3.1(a) for ASX Clear participants to hold and maintain appropriate PI insurance cover and also to notify ASX of details of claims and potential or threatened claims under their PI insurance policy under ASX Clear Operating Rule 4.3.1(c). ASX will also retain the right to request information from an ASX Clear participant about its PI insurance cover under ASX Clear Operating Rule 4.3.1(d).

...

4.4.3 Financial statements

A Participant must prepare and deliver to ASX Clear by the time set out in the Procedures:

- (a) financial statements, in a form acceptable to ASX Clear, which gives a true and fair view of the financial position and performance of the business as at the end of the financial year and which is prepared in accordance with accounting standards and principles which are generally accepted in Australia, unless ASX Clear determines otherwise; and
- (b) an auditor's report in a form acceptable to ASX Clear.

If the financial year end of the Participant is other than 30 June, the Participant must notify ASX Clear of its financial year end. Any change to a Participant's financial year end must be notified to ASX Clear within 10~~5~~ Business Days of the change taking effect.

Purpose of amendment:

ASX is proposing to extend the timeframe for notification of a change to an ASX Clear participant's financial year end from 5 business days to 10 business days to bring it into line with other notification obligations in the various ASX rulebooks.

...

4.5 AUDIT REQUIREMENTS

...

4.5.3 Notification of change of auditor

A Participant must notify ASX Clear of the appointment, removal or resignation of an auditor no later than 10~~5~~ Business Days following the event.

4.5.4 Audit of internal control procedures

A Participant must immediately notify ASX Clear in writing if an auditor identifies a significant issue in an ASIC Form FS 71 or equivalent report ~~A Participant must provide to ASX Clear a copy of any audit report lodged with the Commission pursuant to section 989B(3) of the Corporations Act and that issue is significant, as set out in the Procedures as soon as practicable after the report has been given to the Commission and no later than when it delivers its financial statements under Rule 4.4.3.~~

...

4.5.7 Returns and reports generally

Where a Participant is required by ASX Clear under these Rules to prepare or submit a financial return or report:

- (a) the Participant must prepare or submit that return or report in the manner and form and by the time specified in the Rule or otherwise required by ASX Clear;
- (b) the Participant must ensure that the information contained in the return or report is extracted accurately from the records of the Participant; and
- (c) ASX Clear may require a director of the Participant ~~or a Responsible Executive~~ to certify that paragraphs (a) and (b) have been complied with.

Purpose of amendment:

ASX is proposing to amend ASX Clear Operating Rule 4.5.3 to extend the period for notification of a change of auditor to 10 business days to be consistent with other ASX rulebooks.

To reduce the administrative burden on participants, ASX is proposing to remove the requirement presently in ASX Clear Operating Rule 4.5.4 for participants to lodge an ASIC Form FS 71 audit report annually with ASX and to replace that with an obligation simply to notify ASX where a significant issue has been identified by the auditor in that report.

In addition, ASX is proposing to amend ASX Clear Operating Rule 4.5.7 to remove the redundant reference to 'responsible executives'.

4.6 RECORD KEEPING REQUIREMENTS

4.6.1 Records to be in writing and in English

The record keeping requirements of this Section are that all records which a Participant is required to maintain under [these Rules 4.6](#) must be kept in writing and in the English language or in a manner which will enable them to be readily accessible by ASX Clear and readily converted into writing in the English language.

ASX Clear may direct a Participant to convert records into writing and into English. That direction must be complied with by the time specified by ASX Clear when giving the direction and at the cost of the Participant.

4.6.2 Records kept outside of Australia

If the records which a Participant is required to maintain under [these Rules 4.6](#) are kept outside Australia:

- (a) the Participant must send, or cause to be sent, to Australia records which will enable true and fair financial statements to be prepared; and
- (b) ASX Clear may direct a Participant to produce any of its records in Australia.

A Participant must comply with any direction given by ASX Clear under paragraph (b) by the time specified by ASX Clear when giving the direction and at the cost of the Participant.

Purpose of amendment:

ASX is proposing to correct some minor drafting errors in ASX Clear Operating Rules 4.6.1 and 4.6.2. Both rules should refer to records which a participant is required to maintain under the ASX Clear Rules, rather than under Rule 4.6. ASX Clear Operating Rule 4.6 does not require any records to be retained.

4.7 NOTIFICATION REQUIREMENTS

4.7.1 Notification requirements

The notification requirements of this Section are that a Participant must notify ASX Clear in writing:

- (a) if the Participant changes its name, or the name under which the Participant carries on business as a Participant, before the change becomes effective;
- (b) if the Participant changes any address at which the Participant carries on business as a Participant, before the change becomes effective;

- (c) within 10 Business Days of the appointment, resignation or removal of a ~~new director or Responsible Executive or of a person ceasing to be a director or Responsible Executive for any reason;~~
- (d) immediately if:
- (i) a person who is not a Controller becomes a Controller or a person who is a Controller ceases to be a Controller;
 - (ii) there is any change to a licence or other authorisation affecting its activities as a Participant; or
 - ~~(iii) — there is any change to its management structure which the Participant has previously provided to ASX Clear; or~~
 - ~~(iii)~~ there is any other material change in information concerning its business as a Participant from that previously provided to ASX Clear;
- (e) on or before the next Business Day, if the Participant is informed by the Commission or its delegates (or any other person authorised under the Corporations Act), an exchange, a market operator, a clearing and or 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; and
- (f) as soon as reasonably practicable of information concerning any matters specified by ASX Clear in the Procedures.

The notice must include full details of the change, action or information as the case may be.

Unless the Participant is an Australian ADI, the Participant must also provide to ASX Clear annually by 31 July, a copy of the Participant's group structure chart as at the preceding 30 June. The chart must show the Participant's corporate ownership structure from its ultimate holding company to the Participant and from the Participant to all of its subsidiaries (including any nominee company). It must also show the relationship between the Participant and any other entity with which it has inter-group balances.

Note: Participants should also refer to Rule 19.1A for self-reporting requirements.

Purpose of amendment:

ASX is proposing to amend ASX Clear Operating Rule 4.7.1(c) to extend the period for notification of the appointment, resignation or removal of a director to 10 business days to be consistent with other ASX rulebooks.

To reduce the administrative burden on participants, ASX is also proposing to remove the requirement in ASX Clear Operating Rule 4.7.1(d) for participants to notify ASX of changes to their management structure.

ASX is proposing to add a new requirement at the end of ASX Clear Operating Rule 4.7.1 for non-ADI participants to provide to ASX annually by 31 July, a copy of the participant's group structure chart as at the preceding 30 June. ASX requires this information to facilitate its review of participant capital returns and the clearing house's compliance with the Financial Stability Standards. The information helps ASX in understanding the relationship between participants and other group entities and the treatment of intergroup balances. It also helps to identify affiliated clearing participants for capital stress testing.

Currently ASX serves written requests on ASX Clear participants each year to provide this information. Adopting the last paragraph in ASX Clear Operating Rule 4.7.1 above will eliminate the need for these annual written requests.

4.8 MANAGEMENT REQUIREMENTS – [DELETED]

4.8.1 Management structure – [Deleted]

~~The management requirements of this Section are that a Participant must have an appropriate management structure in place, including operations and processes:~~

- ~~(a) — to ensure that its Responsible Executives have adequate supervision and effective control over all parts of the Participant's business relating to the Participant's activities in ASX Clear, wherever the conduct occurs or the business is located and regardless of the number of offices operated or intended to be operated by the Participant;~~
- ~~(b) — which are reasonably designed, implemented and function so as to achieve compliance by the Participant with the Rules;~~
- ~~(c) — the design, implementation, functioning and review of which are subject to the supervision of one or more Responsible Executives; and~~
- ~~(d) — to ensure that each Responsible Executive has sufficient seniority and authority within the Participant to exert control, leadership, influence and supervision over those operations and processes.~~

~~A Participant must keep accurate records of its management structure and its allocation of responsibilities among its Responsible Executives and must give a copy of the management structure to ASX Clear.~~

4.8.2 Branch offices – [Deleted]

Purpose of amendment:

ASX is proposing to remove the management requirements in ASX Clear Operating Rule 4.8.1. They are no longer required, given the changes proposed above to the organisational admission requirements in ASX Clear Operating Rule 3.5.1 and the operation of ASX Clear Operating Rule 4.1.1(a), which imposes an ongoing obligation on participants to comply with the admission requirements.

4.9 REPRESENTATIVE REQUIREMENTS – [DELETED]

4.9.1 Conduct of representatives – [Deleted]

~~The representative requirements of this Section are that a Participant must not permit a person to do an act or engage in conduct that relates in any way to its activities as a Participant unless the person is:~~

- ~~(a) — a Responsible Executive or is under the supervision and direct control of a Responsible Executive;~~
- ~~(b) — an authorised representative (as defined in the Corporations Act); or~~
- ~~(c) — holds some other authorisation either under the Corporations Act or other laws.~~

Purpose of amendment:

ASX is proposing to delete ASX Clear Operating Rule 4.9.1. It is no longer necessary having regard to the removal from the Corporations Act some years ago of the notion of 'proper authorities' and the proposed removal from the ASX Clear Operating Rules of the requirements regarding 'responsible executives'.

...

4.12 AUTHORISED SIGNATORIES REQUIREMENTS

4.12.1 Participant to submit details of signatories

The authorised signatories requirements of this Section are that a Participant must:

- (a) submit to ASX Clear, in the manner and form prescribed ~~in the Procedures~~ [by ASX from time to time](#), details of persons who are authorised by the Participant to sign documentation [and to deal with clearing issues](#) in connection with the operation of its business as a Participant ~~of ASX Clear. The list must specify the title and function of each of those persons in that business~~; and
- (b) promptly notify ASX Clear in writing if any of the persons whose names are submitted under this Rule 4.12.1 cease to be authorised by the Participant to sign the relevant documentation [or to deal with clearing issues](#) or if any new person is given that authority.

[ASX Clear is entitled to rely on the list referred to in Rule 4.12.1\(a\) as updated from time to time under Rule 4.12.1\(b\) as evidence that the persons whose names are on the list at any given time are authorised to sign on behalf of the Participant documentation presented to ASX Clear or to deal with clearing issues in connection with the operation of its business as a Participant.](#)

[Nothing in this Rule 4.12.1 limits the persons whom ASX is entitled to assume are authorised by the Participant to sign documentation and to deal with clearing issues in connection with the operation of its business as a Participant or the operation of Rule 4.17.1.](#)

Purpose of amendment:

ASX is proposing to delete ASX Clear Operating Rules Procedure 4.12.1 specifying the form in which participants must notify it of the appointment of, or any changes to, their authorised signatories. The matter is administrative in nature and it is not necessary to specify the form of notification in the Procedures. This requires some minor modifications to ASX Clear Operating Rule 4.12.1(a).

ASX is also proposing to amend Rule 4.12.1 to align it with the corresponding provisions in Rules 6510 to 6513 of the ASX and ASX 24 Operating Rules. This includes adding a provision entitling ASX to rely on the list of authorised signatories supplied to it and to confirm that the provision of a list of authorised signatories does not limit the persons whom ASX is entitled to assume are authorised to sign documents or deal with clearing issues or the operation of Rule 4.17.1 (which, amongst other things, makes a Participant liable for any action of its Employees).

...

4.14 INFORMATION REQUIREMENTS

4.14.1 Information given by Participant

The information requirements of this Section are that a Participant must:

- (a) ensure that all information which the Participant, ~~its Responsible Executives~~ or its Employees give to ASX Clear is complete, accurate and not misleading; and
- (b) if the Participant becomes aware that information which it, or its Employees, have given previously to ASX Clear was incomplete, inaccurate or misleading, promptly notify ASX Clear in writing.

Purpose of amendment:

ASX is proposing to amend ASX Clear Operating Rule 4.14.1 to remove a redundant reference to 'responsible executives'.

...

4.16 UNDERTAKING REQUIREMENTS – ~~[Deleted]~~

~~4.16.1 Undertakings~~

~~The undertaking requirements of this Section are that if a Participant proposes to appoint a new Responsible Executive the Participant must deliver to ASX Clear an undertaking from that person, at the time or before the appointment becomes effective.~~

~~4.16.2 ASX Clear may request information~~

~~Where Rule 4.16.1 applies, ASX Clear may require the Participant or Responsible Executive to provide further information which ASX Clear considers necessary to establish whether the Admission Requirements which relate to the Responsible Executive are satisfied.~~

Purpose of amendment:

ASX is proposing to remove the 'responsible executive' requirements from the ASX Clear Operating Rules. This includes the undertaking requirements in ASX Clear Operating Rule 4.16.

4.17.1 Responsibility for individuals involved in business

A Participant is responsible for all actions and omissions of persons involved in its business as a Participant ~~in connection with that business~~ including, without limitation, its Employees.

Purpose of amendment:

ASX is proposing some minor grammatical amendments to ASX Clear Operating Rule 4.17.1 for consistency with other ASX rulebooks.

...

4.19 FOREIGN PARTICIPANTS AND OTHER PARTICIPANTS WITH OVERSEAS ACTIVITY

4.19.1 Approvals in respect of overseas activity

A Participant that proposes to locate or relocate any part of its business as a Participant (including, without limitation, any Gateway or other ~~appropriate~~ means of communicating Clearing Messages to ASX Clear), or to locate or relocate any ~~Employees of its personnel engaged in its business as a Participant~~, outside Australia (the "Overseas Activity") must comply with the requirements set out in the Procedures.

- ~~(a) provide prior written notification to ASX Clear including details of the proposed Overseas Activity;~~

- ~~(b) obtain all necessary regulatory approvals from any relevant governmental agency or regulatory authority in Australia or elsewhere; and~~
- ~~(c) comply with the directions of ASX Clear and any relevant governmental agency or regulatory authority in Australia concerning the supervision of the Overseas Activity.~~

4.19.2 Overseas Duties and Taxes

If a Participant is incorporated outside Australia or conducts part of its business as a Participant outside Australia and:

- (a) any tax or duty of any kind would be liable to be paid by ASX Clear, a Related Body Corporate of ASX Clear or any other person bound by these Rules (each an "Entity");
- (b) the Participant would be required by any law or regulation to withhold payment of an amount or deduct a tax or duty of any kind from an amount payable by it to any Entity; or
- (c) an Entity or Entities are required by any law or regulation to withhold payment of an amount or deduct a tax or duty of any kind from an amount payable by the Entity or Entities,

in respect of any transaction or agreement between that Participant and any Entity or Entities, and that duty or tax would not be liable to be paid or would not be required to be withheld or deducted if the Participant were incorporated in Australia and conducting its business as a Participant wholly in Australia, then the Participant must disclose to each relevant Entity that the duty or tax may be payable, or withholding or deduction may have to be made, before the relevant transaction or agreement to which the duty or tax relates is entered into or instructions are accepted. The disclosure must be in writing and include the nature of the duty, tax or withholding and the amount of the likely duty, tax or withholding or the appropriate rate of duty or tax.

4.19.3 Indemnity

Without limiting any other indemnity given by a Participant under these Rules, each Participant indemnifies ASX Clear in respect of any loss or damage caused to ASX Clear as a result of a failure by that Participant to observe the requirements of Rules 4.19.1 – 4.19.3.

4.19.42 Communication requirements ~~Location of personnel in Australia~~

A Participant must ensure, even if part of its business as a Participant or some of its ~~Employees~~ personnel are located outside Australia, that it has in place appropriate arrangements ~~sufficient personnel and other resources located in Australia~~ so that the Participant and ASX Clear (and ~~r~~Related ~~b~~Bodies ~~e~~Corporate of ASX Clear) can communicate with each other ~~promptly~~ and receive each other's responses quickly on a day-to-day operational basis and so that the Participant can promptly comply with the Rules or a request of ASX Clear (or a Related Body Corporate of ASX Clear) ~~promptly~~.

4.19.5 Agent for service of process

A Participant that is not incorporated or registered as a foreign company under the Corporations Act must:

- (a) appoint an agent, as approved by ASX Clear, which is resident in Australia for service of process in Australia;
- (b) provide ASX Clear as soon as practicable with a copy of any agent's acceptance of such appointment;
- (c) inform ASX Clear of the intended effective date of any agent ceasing for any reason to act as agent for the Participant; and
- (d) if paragraph (c) applies, appoint as soon as practicable, and in any case before an outgoing agent ceases acting as agent for the Participant, a new agent, as approved by ASX Clear.

Purpose of amendment:

As part of standardising the admission requirements for participants in its markets and facilities, ASX is proposing to introduce a uniform regime across those markets and facilities for offshoring and outsourcing. This regime will recognise and facilitate the increasing trend for participants to offshore some of their activities to regional centres of excellence and to use specialist outsourcers for particular activities. It will also ensure that ASX has an appropriate rule framework to regulate offshored and outsourced activities across all of its markets and facilities.

The new regime for offshoring and outsourcing will be based on the existing provisions in ASX and ASX 24 Operating Rules 1002 and 6400-6402 and the related Procedures, ASX Clear Operating Rules 3.8.1 and 4.19.1 – 4.19.4 and ASX Settlement Operating Rule 4.12.2, and will be standardised across all of ASX's markets and facilities.

To that end, ASX is proposing to make some minor changes to ASX Clear Operating Rule 4.19.1 to make it clear that it applies to the relocation of activities from one overseas location to another and to move the particular requirements applicable to overseas activity from ASX Clear Operating Rule 4.19.1 to the Procedures.

ASX is also proposing to introduce new ASX Clear Operating Rules 4.19.2 and 4.19.3 to mirror ASX and ASX 24 Operating Rules [6401] and [6402] and new ASX Clear Operating Rules 4.19.5 to mirror ASX Settlement Operating Rule 4.12.2.

ASX is further proposing to amend existing ASX Clear Operating Rule 4.19.2 (to become ASX Clear Operating Rule 4.19.4) to simply require a participant to have appropriate means of communicating with ASX and to remove the requirement that a participant have personnel and resources based in Australia.

...

4.22 RESPONSIBLE EXECUTIVE REQUIREMENTS – [Deleted]

4.22.1 Responsible Executive obligations

A Responsible Executive must:

- ~~(a) be resident in Australia (unless the Responsible Executive is responsible for the supervision of a branch in another country, in which case the Responsible Executive must be resident in that country);~~
- ~~(b) be of good fame and character and high business integrity;~~
- ~~(c) have completed qualifications or training of a type set out in the Procedures;~~
- ~~(d) have experience which ASX Clear considers is appropriate having regard to the supervisory role which the Responsible Executive performs in the business of the Participant;~~
- ~~(e) supervise the design, implementation, functioning and review of the operations and processes referred to in Rule 4.8.1 in respect of that part of a Participant's business which the management requirements referred to in Rule 4.8 identifies as being under the supervision of that Responsible Executive while the Responsible Executive is responsible for that part of the business;~~
- ~~(f) be accountable to the Participant for the effective design, implementation, functioning and review of the operations and processes referred to in paragraph (e);~~
- ~~(g) comply with his or her undertakings given under Rules 3.5(e) and 4.16;~~
- ~~(h) must ensure that all information which the Responsible Executive gives to ASX Clear is complete, accurate and not misleading. If the Responsible Executive becomes aware that information which he or she has given previously to ASX Clear was incomplete, inaccurate or misleading, the Responsible Executive must promptly notify ASX Clear in writing;~~

- ~~(i) if a Responsible Executive is informed by the Commission or its delegates (or any other person authorised under the Corporations Act), or by an exchange, market operator, clearing and settlement facility or regulatory body (whether constituted in or outside Australia) that action is being or may be taken against the Responsible Executive that relates in any way to his or her activities as a Responsible Executive, the Responsible Executive must immediately notify the Participant in writing;~~
- ~~(j) not engage (by act or omission) in Unprofessional Conduct;~~
- ~~(k) have sufficient seniority and authority within the Participant to exert control, leadership, influence and supervision over that part of the Participant's business which the management requirements referred to in Rule 4.8.1 identifies as being under the supervision of that Responsible Executive;~~
- ~~(l) provide to his or her Participant an annual representation in the form and by the time set out in the Procedures; and~~
- ~~(m) not be the subject of a current order under the ASX Enforcement and Appeals Rulebook.~~

~~Where a Responsible Executive fails to comply with the obligations set out in this Rule 4.22, the Participant will also have contravened this Rule.~~

4.22.2 Suitably qualified affiliate

~~Where a Participant has notified ASX Clear of its appointment of a Responsible Executive, the Responsible Executive, will be for the purpose of Section 761A of the Corporations Act, recognised as a suitably qualified affiliate of ASX Clear. Recognition will continue for the purposes of ongoing jurisdiction in relation to that part of the business which is or was under the supervision and control of the Responsible Executive.~~

4.22.3 Assessment of character

~~In assessing whether an individual is of good fame and character for the purpose of these Rules, but without limiting the discretion of ASX Clear:~~

- ~~(a) a person will not be of good fame and character if he or she is disqualified from managing a corporation under the Corporations Act or under the law of another country or is an insolvent under administration or its equivalent in another country; and~~
- ~~(b) ASX Clear may have regard to whether the person has (in Australia or elsewhere):~~
 - ~~(i) been charged with or convicted of any offence;~~
 - ~~(ii) been disciplined or adversely mentioned in a report made by, or at the request of, any government or governmental authority or agency;~~
 - ~~(iii) been adversely mentioned in a report made by, or at the request of, ASX Clear, any Approved Market Operator or any other financial market or clearing and settlement facility; or~~
 - ~~(iv) been disciplined by ASX Clear, any Approved Market Operator, any Approved Settlement Facility, any other financial market or clearing and settlement facility, or government or other regulatory body.~~

Purpose of amendment:

ASX is proposing to remove the 'responsible executive' requirements from the ASX Clear Operating Rules. This includes ASX Clear Operating Rule 4.22.

...

4.23 RECONCILIATION OF CLIENT MONEY REQUIREMENTS

...

4.23.5 Reconciliation of clients' segregated accounts

A Participant must perform a reconciliation, in the time, form and manner set out in the Procedures [and that is accurate in all respects](#), of the aggregate balance held by it at the time specified in the Procedures on each Business Day in clients' segregated accounts maintained pursuant to Rule 4.23.4 and the corresponding balance as recorded in the Participant's accounting records. ~~that:~~ [The Participant must be able to produce the reconciliation to ASX upon request.](#)

- ~~(a) is accurate in all respects; and~~
- ~~(b) contains a statement signed by a Responsible Executive or a person authorised in writing by a Responsible Executive, stating that the signatory believes, and has no reason not to believe, that the reconciliation is accurate in all respects.~~

4.23.6 Reconciliation of trust accounts

A Participant must perform a reconciliation, in the time, form and manner set out in the Procedures [and that is accurate in all respects](#) of:

- (a) the aggregate balance held by it at the close of business on each Business Day in clients' trust accounts maintained pursuant to Rule 4.23.3 or 4.23.4 and the corresponding balance as recorded in the Participant's accounting records; and
- (b) the balance held by it at the close of business on the last Business Day of each week on trust for each client in a trust account maintained pursuant to Rule 4.23.3 or 4.23.4 and the corresponding balance as recorded in the Participant's accounting records,

[The Participant must be able to produce the reconciliation to ASX upon request](#) ~~that:~~

- ~~(c) is accurate in all respects; and~~
- ~~(d) contains a statement signed by a Responsible Executive or a person authorised in writing by a Responsible Executive, stating that the signatory believes, and has no reason not to believe, that the reconciliation is accurate in all respects.~~

Purpose of amendment:

ASX is proposing to amend ASX Clear Operating Rules 4.23.5 and 4.23.6 to reflect the proposed removal of the requirement for participants in ASX Clear to nominate 'responsible executives'.

SECTION 15 DEFAULT

15.1 EVENTS OF DEFAULT

15.1.1 Events of default by Participant

[ASX Clear may regard any](#) ~~Each~~ of the following events [is](#) an event of default by a Participant:

...

Purpose of amendment:
ASX is proposing to amend ASX Clear Operating Rule 15.1.1 to align it with the language used in ASX and ASX 24 Operating Rule [5161] and to provide ASX the discretion on whether or not to treat one of the nominated events as an event of default.

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~~s, 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;

...

Purpose of amendment:
ASX is proposing to amend ASX Clear Operating Rule 15.2.1 to align it with the language used in ASX and ASX 24 Operating Rule [5160].

...

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.](#)

Purpose of amendment:
ASX is proposing to amend ASX Clear Operating Rule 15.5.1 to specify how a participant will be notified of action taken against it under ASX Clear Operating Rule 15.2.

SECTION 19 COMPLIANCE, ENFORCEMENT ACTIONS AND APPEALS

19.1 MONITORING COMPLIANCE

This Section deals with supervision and enforcement matters including:

- (a) investigating the activities of a ~~Participant~~~~Regulated Person~~ and the powers of ASX Clear to obtain information, inspect records and obtain an Accountant's report at the cost of a ~~Participant~~~~Regulated Person~~;
- (b) the circumstances when a ~~Participant~~~~Regulated Person~~ must inform ASX Clear of certain matters;
- (c) the taking of enforcement action by ASX Clear for a contravention of the Rules;
- (d) enforcement action to suspend or terminate a ~~Participant~~~~Regulated Person~~; and
- (e) the consolidation of investigations.

The establishment and composition of the Tribunal Panel, the Appeal Tribunal, the powers of the Tribunal and how appeal proceedings (including from sanctions imposed by ASX Clear as part of an enforcement action) before the Appeal Tribunal are to be conducted are set out in the ASX Enforcement and Appeals Processes Rulebook.

19.1.1 Obtaining information

ASX Clear may at any time investigate the activities of a ~~Regulated Person~~~~Participant~~. As part of any investigation, ASX Clear may require a ~~Regulated Person~~~~Participant~~ to do one or both of the following:

- (a) to provide any information known to the ~~Regulated Person~~~~Participant~~; and
- (b) by notice in writing, to provide or permit inspection at the offices of the ~~Regulated Person~~~~Participant~~ or any other place notified by ASX Clear of any records in the custody, control or possession of the ~~Regulated Person~~~~Participant~~,

in connection with the performance by the ~~Regulated Person or the relevant~~ Participant of ~~its~~~~their~~ obligations under the Rules or the Procedures. ASX Clear may also require, by notice in writing, that a ~~Regulated Person~~~~Participant~~ provide specified information relating to the terms and circumstances of, and the parties to, any dealings in relevant Financial Products by Clients and former Clients of the ~~relevant~~ Participant.

19.1.2 ~~Regulated Person~~~~Participant~~ to comply

If a ~~Regulated Person~~~~Participant~~ is required to provide information or receives a notice under Rule 19.1.1, the ~~Regulated Person~~~~Participant~~ must:

- (a) provide the information, or provide or permit inspection of the records in accordance with the notice;
- (b) provide assistance to ASX Clear as ASX Clear may reasonably require in relation to the information required or the notice; and
- (c) bear any costs incurred by the ~~Regulated Person~~~~Participant~~ in connection with providing the information or complying with the notice or providing assistance to ASX Clear.

19.1.3 Attendance of individuals before ASX Clear

Without limiting the powers under Rule 19.1.1, ASX Clear may, in connection with an investigation, require a ~~Regulated Person~~~~Participant~~ and its Employees to appear for interview before ASX Clear to give any information required by ASX Clear in relation to the business of the ~~relevant~~ Participant or to enable ASX Clear to consider whether or not the Participant continues to comply with the Admission Requirements and whether the ~~Regulated Person~~~~Participant~~ has complied with the ~~Regulated Person~~~~Participant~~'s obligations under these Rules. A ~~Regulated Person~~~~Participant~~ must comply, and must ensure that its Employees comply, with any requirement of ASX Clear under this Rule 19.1.3.

19.1.4 Other requirements of investigation

ASX Clear 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 Clear considers to be reasonably necessary to preserve the integrity of the investigation.

A ~~Regulated Person~~Participant must comply, and ensure that its Employees comply, with any requirement imposed under this Rule 19.1.4.

19.1.5 Provision of independent expert report or certification

ASX Clear may by notice to a Participant require the Participant to provide a report, in a form acceptable to ASX Clear, from a suitably qualified independent expert approved by ASX Clear expressing an opinion as to:

- (a) the performance by the Participant of its obligations (including its ability to perform its obligations in future) under the Rules;
- (b) the Participant's capacity to continue to meet the requirements for admission as a Participant; and
- (c) any other matter which in the opinion of ASX Clear is necessary to assist ASX Clear in the discharge of its functions under these Rules or as ASX Clear otherwise considers appropriate having regard to Rule 1.15

19.1.6 ASX Clear may appoint Accountant

If a ~~Regulated Person~~Participant fails to comply with a direction by ASX Clear under Rule 19.1.5, ASX Clear may appoint an Accountant to investigate the ~~Regulated Person~~Participant and prepare a report in a form and within a time determined by ASX Clear. The ~~Regulated Person~~Participant must give all necessary assistance required by the Accountant to prepare the report and must at the request of the Accountant direct third parties to make available all information the Accountant requires.

19.1.17 Authority of Accountant appointed by ASX Clear

An Accountant appointed by ASX Clear under Rule 19.1.6 is taken to be the ~~Regulated Person~~Participant's attorney for the purpose of obtaining any information or documents from third parties which in the opinion of the Accountant or ASX Clear are necessary for the Accountant to prepare the report or further report.

19.1.8 Cost of Accountant

Unless ASX Clear otherwise determines, the ~~relevant Regulated Person~~Participant must pay the cost of the report of the Accountant prepared under this Rule 19.1.

Purpose of amendment:

ASX is proposing to amend ASX Clear Operating Rule 19.1 to reflect the proposed removal of the requirement for participants in ASX Clear to nominate 'responsible executives' and the consequential deletion of the definition of 'Regulated Person'. All references in that rule to a 'Regulated Person' should now simply refer to a 'Participant'.

19.1A SELF-REPORTING BY PARTICIPANTS

19.1A.1 Self-reporting by Participants

A Participant must notify ASX Clear in writing immediately if:

- (a) it becomes aware that it has breached any of the Rules or the Procedures and that breach is significant;
- (b) any circumstance exists which constitutes an event of default under Rule 15.1 or an event referred to in paragraphs (a) or (d) of Rule 15.3;
- (c) the Participant or any of its Employees is the subject of any regulatory or disciplinary or enforcement action by any market operator, another clearing and settlement facility, the Commission or any other regulatory authority in connection with its activities as a Participant or if the Participant becomes aware that any Market Participant which clears Market Transactions through the Participant is the subject of any action of that type in connection with its activities as a Market Participant;
- (d) the Participant suspects or becomes aware that any Employee has engaged in fraudulent conduct or other conduct which might constitute Unprofessional Conduct; or
- (e) the Participant becomes aware or has reasonable grounds for suspecting the existence of any other event or circumstance which adversely affects or may adversely affect its financial position or solvency or its ability to comply with the Rules or the Procedures.

For the purposes of determining whether a breach is significant for the purposes of paragraph (a), a Participant must have regard to the following:

- (f) the number or frequency of similar breaches;
- (g) the impact of the breach on the Participant's ability to comply with any other Rule or Procedure or to conduct its business operations;
- (h) the extent to which the breach indicates that a Participant's arrangements to ensure compliance with the Rules and Procedures is inadequate;
- (i) the actual or potential financial loss to clients of the Participant, or the Participant itself, arising from the breach; and
- (j) any other matters specified by ASX Clear from time to time.

...

Purpose of amendment:

ASX is proposing to relocate the self-reporting obligations presently in ASX Clear Operating Rule 19.2.3 into a separate ASX Clear Operating Rule 19.1A.1. Those obligations do not sit comfortably under a section headed "Provision of Audit Report to ASX Clear".

19.2 PROVISION OF AUDIT REPORT TO ASX CLEAR

19.2.1 Audit of ~~Regulated Person~~Participants

ASX Clear may by notice to a ~~Regulated Person~~Participant require the ~~Regulated Person~~Participant to provide a report from an independent auditor or other expert approved by ASX Clear expressing an opinion as to:

- (a) the performance by the ~~Regulated Person~~Participant and any third party provider of the ~~Regulated Person~~Participant of the ~~Regulated Person~~Participant's obligations under the Rules;

- (b) the ~~Regulated Person~~Participant's capacity to continue to meet the requirements for admission as a ~~Regulated Person~~Participant under Section 3; or
- (c) any other matter which in the opinion of ASX Clear is necessary to assist ASX Clear in the discharge of its functions under these Rules.

19.2.2 Notice, reporting and costs of audit of obligations

If ASX Clear gives notice to a ~~Regulated Person~~Participant requiring that ~~Regulated Person~~Participant to provide a report under Rule 19.2.1;

- (a) ASX Clear must specify in that notice the date and time by which the ~~Regulated Person~~Participant is to provide the report and that date must be a date not less than 1 month from that date that ASX Clear gives the notice; and
- (b) the ~~Regulated Person~~Participant must:
 - (i) provide that report to ASX Clear within the time specified in the notice; and
 - (ii) bear any costs incurred by the ~~Regulated Person~~Participant in obtaining the report.

19.2.3 ~~Notice by Regulated Person~~

~~A Regulated Person must notify ASX Clear in writing immediately if:~~

- ~~(a) it becomes aware that it has breached any of the Rules or the Procedures and that breach is significant;~~
- ~~(b) any circumstance exists which constitutes an event of default under Rule 15.1 or an event referred to in paragraphs (a), (b) or (c) of Rule 15.3;~~
- ~~(c) the Regulated Person or any of its Employees is the subject of any regulatory or disciplinary or enforcement action by any market operator, another clearing and settlement facility, the Commission or any other regulatory authority in connection with its activities as a Regulated Person (or if the Regulated Person becomes aware that any Market Participant which clears Market Transactions through the Regulated Person is the subject of any action of that type in connection with its activities as a Participant);~~
- ~~(d) the Regulated Person suspects or becomes aware that any Employee has engaged in fraudulent conduct or other conduct which might constitute Unprofessional Conduct; or~~
- ~~(e) the Regulated Person becomes aware or has reasonable grounds for suspecting the existence of any other event or circumstance which adversely affects or may adversely affect its financial position or solvency or its ability to comply with the Rules or the Procedures.~~

~~For the purposes of determining whether a breach is significant for the purposes of paragraph (a), a Participant must have regard to the following:~~

- ~~(f) the number or frequency of similar breaches;~~
- ~~(g) the impact of the breach on the Participant's ability to comply with any other Rule or Procedure or to conduct its business operations;~~
- ~~(h) the extent to which the breach indicates that a Participant's arrangements to ensure compliance with the Rules and Procedures is inadequate;~~
- ~~(i) the actual or potential financial loss to clients of the Participant, or the Participant itself, arising from the breach; and~~
- ~~(j) any other matters specified by ASX Clear from time to time.~~

~~19.2.4~~ **Notice by other Regulated Person**

~~A Regulated Person (other than a Participant) must notify ASX Clear in writing immediately if the Regulated Person:~~

- ~~(a) fails to perform any of his or her responsibilities under these Rules or the Procedures;~~
- ~~(b) is the subject of any regulatory, disciplinary or enforcement action by any market operator, another clearing and settlement facility, the Commission or any other regulatory authority; or~~
- ~~(c) becomes aware of any other event or circumstance which adversely affects or may adversely affect his or her ability to perform any of his or her responsibilities under these Rules or the Procedures, or the Participant's ability to perform any of its responsibilities under these Rules or Procedures.~~

Purpose of amendment:

ASX is proposing to amend ASX Clear Operating Rules 19.2.1 and 19.2.2 to reflect the proposed removal of the requirement for participants in ASX Clear to nominate 'responsible executives' and the consequential deletion of the definition of 'Regulated Person'. All references in those rules to a 'Regulated Person' should now simply refer to a 'Participant'.

As mentioned above, ASX is proposing to relocate the self-reporting obligations presently in ASX Clear Operating Rule 19.2.3 into a separate ASX Clear Operating Rule 19.1A.1. Those obligations do not sit comfortably under a section headed "Provision of Audit Report to ASX Clear". Consequently, ASX is proposing to delete ASX Clear Operating Rule 19.2.3.

ASX is also proposing to delete ASX Clear Operating Rule 19.2.4. It only operates in relation to responsible executives (a regulated person other than a participant) and therefore is no longer required, given the proposed removal of the 'responsible executive' requirements from the ASX Clear Operating Rules.

19.3 ENFORCEMENT ACTION

19.3.1 Enforcement action for breach of rules

If ASX Clear considers that a ~~Regulated Person~~[Participant](#) has contravened the Rules or the Procedures, ASX Clear may take any action in accordance with the provisions of the ASX Enforcement and Appeals Rulebook.

Purpose of amendment:

ASX is proposing to amend ASX Clear Operating Rule 19.3 to reflect the proposed removal of the requirement for participants in ASX Clear to nominate 'responsible executives' and the consequential deletion of the definition of 'Regulated Person'. The reference in that rule to a 'Regulated Person' should now simply refer to a 'Participant'.

19.6 SUSPENSION AND TERMINATION OF OTHER REGULATED PERSONS [\[Deleted\]](#)

~~19.6.1~~ **Regulated Person declared a defaulter**

~~Where a Regulated Person (other than a Participant):~~

- ~~(a) in the opinion of ASX Clear, has failed or is unable to fulfil the person's obligations or responsibilities under the Rules;~~
- ~~(b) becomes an insolvent under administration; or~~
- ~~(c) is a director or partner of a Participant whose admission as a Participant is terminated by ASX Clear under these Rules;~~

~~ASX Clear may, by notice to the Regulated Person, declare the Regulated Person a defaulter. The recognition of the person as a Regulated Person (other than a Participant) ceases on the issue of that notice.~~

19.6.2 — Suspension or termination in interests of ASX Clear

~~ASX Clear may suspend or terminate the recognition of the Regulated Person (other than a Participant), if, in the opinion of ASX Clear, having regard to Rule 1.15, it is appropriate.~~

19.6.3 — Suspension

~~If ASX Clear suspends recognition of a Regulated Person under Rule 19.6.1:~~

- ~~(a) the initial period of suspension must not exceed one month although ASX Clear may extend that period for additional periods of not more than one month at a time if it reasonably believes an extension is necessary or desirable;~~
- ~~(b) the Regulated Person must not hold itself out as a Regulated Person during a period of suspension; and~~
- ~~(c) during a period of suspension, ASX Clear may, pursuant to its powers under Rule 19.4.1 but subject to Rule 19.6.4, terminate the recognition of the Regulated Person.~~

~~Introduced 11/03/04 Origin OCH 16.4A.3~~

19.6.4 — No termination without hearing

~~ASX Clear must not terminate the recognition of a Regulated Person under Rule 19.6.1 unless ASX Clear first gives the Regulated Person an opportunity to do one or both of the following, at the option of the Regulated Person:~~

- ~~(a) appear in person or be represented before ASX Clear; and~~
- ~~(b) lodge with ASX Clear a written submission for consideration by ASX Clear, in relation to the proposed termination.~~

~~ASX Clear must determine the matter without bias and must give the Regulated Person a fair hearing and otherwise observe the rules of procedural fairness.~~

Purpose of amendment:

ASX is proposing to delete ASX Clear Operating Rule 19.6. It only operates in relation to responsible executives (a regulated person other than a participant) and therefore is no longer required, given the proposed removal of the 'responsible executive' requirements from the ASX Clear Operating Rules.

19.7 APPEALS

19.7.1 Appeal from decision of ASX Clear

If a ~~Regulated Person~~ Participant is dissatisfied with a determination of ASX Clear to issue an Enforcement Notice under Section 2 of the ASX Enforcement and Appeals Rulebook or any sanction imposed in the Enforcement Notice, the ~~Regulated Person~~ Participant may appeal to the Appeal Tribunal in accordance with the provisions of the ASX Enforcement and Appeals Rulebook.

19.7.2 Appeal from decision of ASX Clear under Section 15

If a Participant is dissatisfied with a decision of ASX Clear to suspend or terminate the admission of a Participant under Section 15, the Participant may appeal to the Appeal Tribunal in accordance with the provisions of the ASX Enforcement and Appeals Rulebook.

19.7.3 Appeal from decision of ASX Clear under Rule 19.6.2 ~~[Deleted]~~

~~If a Regulated Person is dissatisfied with a decision of ASX Clear to suspend or terminate the recognition of a Regulated Person under Rule 19.6.2, the Regulated Person may appeal to the Appeal Tribunal in accordance with the provisions of the ASX Enforcement and Appeals Rulebook.~~

19.7.4 Action which may be implemented pending appeal

ASX Clear may implement and announce a decision to suspend a Participant pursuant to Rule 15 ~~or a Regulated Person under Rule 19.6.2~~ before the expiry of the time for giving a notice of appeal or before the appeal is determined, if ASX Clear considers it appropriate having regard to Section 1.15 to do so.

19.7.5 Action which may not be implemented pending appeal

ASX Clear may not implement or announce a decision to:

- (a) take enforcement action against a ~~Regulated Person~~ Participant under Rule 2.5 of the ASX Enforcement and Appeals Rulebook; ~~or~~
- (b) terminate a Participant's admission as a Participant under Section 15 of this Rulebook; ~~or~~
- ~~(c) terminate a Regulated Person's recognition as a Regulated Person under Rule 19.6.2,~~

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.

Purpose of amendment:

ASX is proposing to amend Rule 19.7 to reflect the proposed removal of the requirement for participants in ASX Clear to nominate 'responsible executives' and the consequential deletion of the definition of 'Regulated Person'. All references in that rule to a 'Regulated Person' should now simply refer to a 'Participant'.

ASX is proposing to delete the references to ASX Clear Operating Rule 19.6.2 in ASX Clear Operating Rule 19.7, reflecting the proposed deletion of ASX Clear Operating Rule 19.6 above.

19.9 CONSOLIDATION OF INVESTIGATIONS – RELATED BODIES CORPORATE

19.9.1 ASX Clear may consolidate investigation

Subject to Rule 19.9.4, if:

- (a) ASX Clear is entitled to exercise its powers against a ~~Regulated Person~~ Participant under Rule 19.3 in respect of particular circumstances; and
- (b) a Related Body Corporate of ASX Clear has similar powers under its operating rules and is entitled to exercise those powers against the same ~~Regulated Person~~ Participant in respect of the same or similar circumstances,

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

Purpose of amendment:

ASX is proposing to amend ASX Clear Operating Rule 19.9.1 to reflect the proposed removal of the requirement for participants in ASX Clear to nominate 'responsible executives' and the consequential deletion of the definition of 'Regulated Person'. All references in that rule to a 'Regulated Person' should now simply refer to a 'Participant'.

...

19.11 CORPORATIONS ACT COMPLIANCE AND CONTRAVENTIONS

19.11.1 Enforcement of contractual provisions

Where these Rules require a ~~Regulated Person~~Participant to comply with a provision of the Corporations Act (and therefore, contemplate that ASX Clear may take action against a ~~Regulated Person~~Participant for a contravention of that provision):

...

Purpose of amendment:

ASX is proposing to amend ASX Clear Operating Rule 19.11.1 to reflect the proposed removal of the requirement for participants in ASX Clear to nominate 'responsible executives' and the consequential deletion of the definition of 'Regulated Person'. All references in that rule to a 'Regulated Person' should now simply refer to a 'Participant'.

...

19.20 TRANSITIONAL PROVISIONS

19.20.1 Transitional Provision Definitions

For the purposes of this Rule 19.20:

"Commence" means:

- (a) in relation to disciplinary proceedings relating to conduct or a failure prior to the Effective Time, the provision of a contravention notice by ASX Clear to the ~~Regulated Person~~Participant pursuant to Rule 2.1 of the Old Australian Securities Exchange Disciplinary Processes and Appeals Rulebook; and
- (b) in relation to appeal proceedings relating to conduct or a failure prior to the Effective Time, the provision of notice of appeal by the relevant person pursuant to Rule 3.1 of the Old Australian Securities Exchange Disciplinary Processes and Appeals Rulebook.

"Effective Time" means the date of commencement of Schedule 1 to the *Corporations Amendment (Financial Market Supervision) Act 2010*.

"Old ACH Rules" means the ACH Clearing Rules in force before the Effective Time.

"Old Australian Securities Exchange Disciplinary Processes and Appeal Rulebook" means the Australian Securities Exchange Disciplinary Processes and Appeals Rulebook in force before the Effective Time;

"Old Tribunal" means the Disciplinary Tribunal or Appeal Tribunal (as the context requires) convened in accordance with the Old Australian Securities Exchange Disciplinary Processes and Appeal Rulebook, irrespective of whether it is convened before or after the Effective Time.

"Relevant Person" or "~~Regulated Person~~Participant" means a ~~Regulated Person~~Participant or an Affiliate Based CP or a person applying to ASX Clear for admission as a Participant pursuant to Rule 3.1 of the Rules.

19.20.2 Sanctions

Following the Effective Time:

- (a) ASX Clear will have jurisdiction pursuant to Rule 19.3.1 and the ASX Enforcement and Appeals Rulebook and may take any action under that rule or rulebook in respect of a Relevant Person concerning any conduct or failure under:
 - (i) these Rules, where that conduct or failure occurred on or after the Effective Time; or
 - (ii) these Rules and the Old ACH Rules, where the relevant conduct or failure the subject of the action spans both prior to and following the Effective Time, irrespective of when ASX Clear became aware of, or should have become aware of, that conduct or failure;
- (b) the Appeal Tribunal will have jurisdiction pursuant to the ASX Enforcement and Appeals Rulebook and may conduct appeal proceedings (including the holding of any hearings or engaging in any procedures) under those Rules in respect of a Relevant Person concerning any conduct or failure under:
 - (i) these Rules, where that conduct or failure occurred on or after the Effective Time; or
 - (i) these Rules and the Old ACH Rules, where the relevant conduct or failure the subject of the proceedings spans both prior to and following the Effective Time, irrespective of when ASX Clear became aware of, or should have become aware of, that conduct or failure;
- (c) ASX Clear will continue to have jurisdiction pursuant to Rule 19.3.1 of the Old ACH Rules and the Old Australian Securities Exchange Disciplinary Processes and Appeals Rulebook and may take disciplinary action under that rule or rulebook after the Effective Time in respect of a ~~Regulated Person~~Participant concerning any conduct under or any failure to comply with, or any engagement in Unprofessional Conduct under, the Old ACH Rules, where that conduct or failure occurred prior to the Effective Time, irrespective of when ASX Clear became aware of, or should have become aware of, that conduct or failure;
- (d) the Old Tribunal shall continue to have jurisdiction to conduct disciplinary proceedings (including any appeal proceedings from those disciplinary proceedings) or appeal proceedings (as the case may be) in accordance with, and pursuant to its jurisdiction under, the provisions of the Old Australian Securities Exchange Disciplinary Processes and Appeal Rulebook in respect of a ~~Regulated Person~~Participant concerning any conduct under, any failure to comply with, or any engagement in Unprofessional Conduct under, the Old ACH Rules, where that conduct or failure occurred prior to the Effective Time, irrespective of whether disciplinary or appeal proceedings have Commenced prior to the Effective Time or when ASX Clear became aware of, or should have become aware of, that conduct or failure;
- (e) for the purposes of paragraphs (c) and (d) above:
 - (i) the maximum penalty that may be imposed on a ~~Regulated Person~~Participant shall be the maximum penalty that would have been imposed for the relevant conduct or failure under the rules in existence at the time that the relevant conduct or failure occurred, irrespective of whether the disciplinary proceedings

or appeal proceedings (as the case may be) were Commenced before or after the Effective Time;

- (ii) ASX Clear and the Old Tribunal shall take disciplinary action and conduct the disciplinary proceedings or appeal proceedings (as the case may be) with due regard to the relevant rules that were in force at the time that they were alleged to be contravened;
- (f) the Old ACH Rules and the Old Australian Securities Exchange Disciplinary Processes and Appeals Rulebook continue to apply in respect of the ~~Regulated Person~~ Participant to the extent required to give effect to the paragraphs above;
- (g) Nothing in this Rule 19.20.2 limits the continued operation of rule 19.19 of the Old ACH Rules where disciplinary proceedings or appeal proceedings have Commenced (as defined in the Old ACH Rules) prior to the Effective Time (as defined in the Old ACH Rules).

Purpose of amendment:

ASX is proposing to amend ASX Clear Operating Rule 19.20 to reflect the proposed removal of the requirement for participants in ASX Clear to nominate 'responsible executives' and the consequential deletion of the definition of 'Regulated Person'. All references in that rule to a 'Regulated Person' should now simply refer to a 'Participant'.

SECTION 22 TRANSITIONAL ARRANGEMENTS FOR EXISTING ASX PARTICIPATING ORGANISATIONS (CASH MARKET TRANSACTIONS)

~~22.7 TRANSITIONAL ARRANGEMENTS FOR PARTNERSHIPS~~

~~22.7.1 Application~~

~~An Existing Participant which is a partnership will cease to be admitted as a Participant on the first anniversary after the Implementation Date. However, while an Existing Participant which is a partnership continues to be admitted as a Participant, this Rule 22.7 applies to that Existing Participant.~~

~~22.7.2 Admission Requirements~~

~~Rules 3.2.1(a) and (b) do not apply to an Existing Participant which is a partnership but the other Admission Requirements (as modified by this Rule 22.7) apply.~~

~~For the purposes of the business integrity requirements set out in Rule 3.4, where an Existing Participant consists of two or more partners, each of those partners must comply with paragraph (b) of that Rule.~~

~~22.7.3 Conditions~~

~~Without limiting the power to impose conditions under Rule 3.1.4, ASX Clear may impose conditions on admission which it considers appropriate to address issues arising from the use of a partnership.~~

~~22.7.4 Partnership treated as separate person~~

~~These Rules apply to the partnership as if it were a person. In addition, the obligations which are imposed on the Existing Participant are imposed on each partner, but may be discharged by any of the partners.~~

~~22.7.5 Breach of Rules~~

~~Any breach of a Rule that would be a breach by the partnership, or by any partner, is taken to have been a breach by each partner.~~

~~22.7.6 Change in composition of partnership~~

~~A change in the composition of the partnership does not affect the continuity of the partnership. No partner of a Participant may be a body corporate.~~

~~22.7.7 Overseas partnerships~~

~~Where the partnership is formed or resident outside Australia, or any partner is resident outside Australia, ASX Clear may impose requirements similar to those which apply under Rules 3.8 and 4.2.~~

~~22.7.8 Disciplinary action~~

~~ASX Clear may take disciplinary action or enforcement action under Section 19 against an Existing Participant which is a partnership in the name of the Existing Participant without taking action against each partner in the partnership. If the Existing Participant is determined pursuant to Section 19 to have contravened the Rules or to have engaged in Unprofessional Conduct, each partner is jointly and severally liable to pay any penalty imposed and any other sum directed to be paid to ASX Clear and to ensure that any other sanction imposed by the Old Tribunal (as defined in Rule 19.20), ASX Clear or any Appeal Tribunal is enforced and implemented.~~

~~22.7.9 Interpretation of Rules~~

~~In applying the Rules to the partnership:~~

- ~~(a) a reference in a Rule to a "director" is taken to be a reference to a "partner";~~
- ~~(b) a reference in a Rule to a "Related Body Corporate" of an Existing Participant (or an applicant) is taken to be a reference to a "Related Party" of any partner;~~

- ~~(c) a reference in a Rule to an "Employee" is taken to also include a reference to a partner;~~
- ~~(d) a reference in a Rule to the Existing Participant (or the applicant) being "incorporated" somewhere is taken to be a reference to them being "formed" there; and~~
- ~~(e) paragraph (a) of the definition of "Controller" the reference to the total votes attached to voting shares is taken to be a reference to the total voting power in the partnership.~~

Purpose of amendment:

ASX is proposing to delete ASX Clear Operating Rule 22.7. It is no longer relevant as ASX Clear does not have any partnerships as participants.

SECTION 23 TRANSITIONAL ARRANGEMENTS FOR EXISTING ASX PARTICIPATING ORGANISATIONS (DERIVATIVES)

~~23.7 TRANSITIONAL ARRANGEMENTS FOR PARTNERSHIPS~~

~~23.7.1 Application~~

~~This Rule 23.7 applies to an Existing Clearing Participant which is a partnership.~~

~~23.7.2 Admission Requirements~~

- ~~(a) Subject to paragraph (b), Rules 3.2.1(a) and (b) do not apply to an Existing Clearing Participant which is a partnership but the other Admission Requirements (as modified by this Rule 23.7) apply.~~
- ~~(b) a Participant which is a partnership will cease to be admitted as a Participant from the first anniversary of the Implementation Date.~~

~~23.7.3 Conditions~~

~~Without limiting the power to impose conditions under Rule 3.1.4, ASX Clear may impose conditions on admission which it considers appropriate to address issues arising from the use of a partnership.~~

~~23.7.4 Partnership treated as separate person~~

~~These Rules apply to the partnership as if it were a person. In addition, the obligations which are imposed on the Existing Clearing Participant are imposed on each partner, but may be discharged by any of the partners.~~

~~23.7.5 Breach of Rules~~

~~Any breach of a Rule that would be a breach by the partnership, or by any partner, is taken to have been a breach by each partner.~~

~~23.7.6 Change in composition of partnership~~

~~A change in the composition of the partnership does not affect the continuity of the partnership. No partner of a Participant may be a body corporate.~~

~~23.7.7 Overseas partnerships~~

~~Where the partnership is formed or resident outside Australia, or any partner is resident outside Australia, ASX Clear may impose requirements similar to those which apply under Rule 3.8 and Rule 4.2.~~

~~23.7.8 Disciplinary action~~

~~ASX Clear may take disciplinary action or enforcement action under Rule 19 against a Participant which is a partnership in the name of the Participant without taking action against each partner in the partnership. If the Participant is determined pursuant to Rule 19 to have contravened the Rules or to have engaged in Unprofessional Conduct, each partner is jointly and severally liable to pay any penalty imposed and any other sum directed to be paid to ASX Clear and to ensure that any other sanction imposed by the Old Tribunal (as defined in Rule 19.20), ASX Clear or any Appeal Tribunal is enforced and implemented.~~

~~23.7.9 Interpretation of Rules~~

~~In applying the Rules to the partnership:~~

- ~~(a) a reference in a Rule to a "director" is taken to be a reference to a "partner";~~
- ~~(b) a reference in a Rule to a "Related Body Corporate" of an Existing Clearing Participant (or an applicant) is taken to be a reference to a "Related Party" of any partner;~~
- ~~(c) a reference in a Rule to an "Employee" is taken to also include a reference to a partner;~~

- ~~(d) a reference in a Rule to the Existing Clearing Participant (or the applicant) being "incorporated" somewhere is taken to be a reference to them being "formed" there; and~~
- ~~(e) paragraph (a) of the definition of "Controller" the reference to the total votes attached to voting shares is taken to be a reference to the total voting power in the partnership.~~

Purpose of amendment:

ASX is proposing to delete ASX Clear Operating Rule 23.7. It is no longer relevant as ASX Clear does not have any partnerships as participants.

Annexure G

Proposed Changes to ASX Clear Procedures

SECTION 3 PARTICIPATION IN THE CLEARING FACILITY

PROCEDURE 3.1.8 APPLICATION FOR AUTHORISATION TO CLEAR MARKET TRANSACTIONS EFFECTED THROUGH ADDITIONAL APPROVED MARKET OPERATORS

An application by a Participant wishing to have conditions relating to the Approved Market Operators in respect of which it is authorised to clear Market Transactions amended must [include a statement to that effect and an acknowledgement of the matters set out in Procedure 3.2.3](#)~~be made in the form set out in Annexure 3.1.8.~~

Purpose of amendment:

ASX is proposing to delete Annexure 3.1.8 from the Annexures to the ASX Clear Operating Rules Procedures (the separate application form for an ASX Clear participant wishing to have conditions relating to the approved market operators in respect of which it is authorised to clear market transactions amended). The form is administrative in nature and it does not need to form part of the ASX Clear Operating Rules Procedures. This requires a minor modification to Procedure 3.1.8.

PROCEDURE 3.2.2 ADDITIONAL REQUIREMENTS FOR ADMISSION

ASX Clear Operating Rule 3.2.2 provides that if an applicant wishes to be admitted as a General Participant it must comply with any requirements specified by ASX Clear in the Procedures. [The following additional requirements are specified for Trading Participants using multiple Clearing Participants and for Direct Participants wishing to clear for a Wholly-Owned Group Entity.](#)

(a) ~~Attestation by Clearing Participant In Relation To~~ Trading Participants Using Multiple Clearing Participants

When a Clearing Participant:

- [\(i\) clears for itself and also clears through another General Participant;](#)
- [\(ii\) clears for a Market Participant which clears for itself and also clears through another General Participant; or](#)
- [\(iii\) clears for a Market Participant which clears through two or more General Participants.](#)

~~proposes to clear for a Trading Participant which uses multiple Clearing Participants, ASX Clear requires the Clearing Participant to lodge an Attestation. This attests that the Clearing Participant is~~ [acknowledges that it may, in accordance with the ASX Clear Operating Rules, have the Clearing Obligations for a misdirected Market Transaction and that if it does not meet those Clearing Obligations, it may breach the ASX Clear Operating Rules.](#) ~~aware of the increased risks in relation to a Trading Participant using multiple Clearing Participants.~~

~~Time for delivery of Attestation to ASX Clear~~

~~ASX Clear requires lodgement of the Attestation prior to the first occasion the Clearing Participant commences clearing for a Market Participant which clears through more than one Clearing Participant.~~

~~Form of Attestation acceptable to ASX Clear~~

~~The Attestation must be in the form set out in Annexure 3.2.2 The Attestation must be provided to: General Manager, Compliance~~

ASX Limited
20 Bridge St

(b) Direct Participant Legal Opinion

Where a Direct Participant wishes to clear for a Wholly-Owned Group Entity the Direct Participant must, prior to commencing to provide that clearing service, provide ASX Clear with a legal opinion at the expense of the Direct Participant and in a form satisfactory to ASX Clear, ~~certifying~~ confirming that the relevant body corporate satisfies the definition of Wholly-Owned Group Entity.

Purpose of amendment:

ASX is proposing to remove the requirement for an applicant wishing to be admitted as a general participant to provide the form of written attestation currently required under Procedure 3.2.2 acknowledging the matters referred to in that Procedure. It is sufficient to set out the required form of acknowledgement in the Procedures itself without requiring it to be formally attested in writing.

PROCEDURE 3.2.3 ADDITIONAL REQUIREMENTS FOR PARTICIPANTS CLEARING MARKET TRANSACTIONS EFFECTED THROUGH MULTIPLE APPROVED MARKET OPERATORS

ASX Clear Operating Rule 3.2.3 provides that if an applicant for admission, or an existing Participant, wishes to clear Market Transactions effected through two or more Approved Market Operators, the applicant or Participant must, in addition to complying with Rule 3.2.1, comply with any requirements specified by ASX Clear in the Procedures. The following additional requirements are specified for Participants proposing to clear Market Transactions effected through two or more Approved Market Operators.

When an applicant or Participant proposes to clear Market Transactions effected through two or more Approved Market Operators, ~~ASX Clear requires~~ the applicant or ~~Clearing~~ Participant ~~to lodge an Attestation.~~ acknowledges that it will be taken to have agreed to clear every Market Transaction submitted by an Approved Market Operator for registration in the Participant's name, notwithstanding that the Participant has been incorrectly identified in the Approved Market Operator's trade registration request message as a clearing counterparty to the trade (see ASX Clear Operating Rule 12.1.4) and that if it does not meet those Clearing Obligations, it may breach the ASX Clear Operating Rules.

~~This attests that the applicant or Participant is aware of, accepts and has taken appropriate steps to mitigate the increased risk in relation to clearing Market Transactions effected through two or more Approved Market Operators.~~

~~Time for delivery of Attestation~~

~~ASX Clear requires lodgement of the Attestation prior to the first occasion on which the Participant commences clearing Market Transactions effected through two or more Approved Market Operators.~~

~~Form of Attestation~~

~~The Attestation must be in the form set out in Annexure 3.2.3. The Attestation must be enclosed with the application form referred to in ASX Clear Operating Rules Procedure 3.1.8 and sent to:~~

~~General Manager, Clearing and Settlement Operations
ASX Clear Pty Limited
20 Bridge Street
SYDNEY NSW 2000.~~

Purpose of amendment:

ASX is proposing to remove the requirement for an applicant wishing to clear market transactions effected through two or more approved market operators to provide the form of written attestation currently required under Procedure 3.2.3 acknowledging the matters referred to in that Procedure. It is sufficient to set out the required form of acknowledgement in the Procedures itself without requiring it to be formally attested in writing.

PROCEDURE 3.4.1 ~~APPLICANT TO HAVE HIGH BUSINESS INTEGRITY~~
REQUIREMENTS

~~ASX Clear Operating Rule 3.4.1 provides that to be admitted as a Participant an applicant must satisfy ASX Clear that it is of high business integrity, and without limiting the discretion of ASX Clear in assessing an applicant's business integrity ASX Clear may have regard to the matters set out in the Procedures.~~

In order to demonstrate to ASX Clear that it meets the ~~is of high~~-business integrity requirements, an applicant must satisfy one of the following ~~requirements~~:

- (a) If the applicant is an authorised deposit-taking institution which has been granted authority to carry on a banking business in Australia under the Banking Act 1959, ~~that~~ the applicant must confirm to ASX Clear that it has in place a 'fit and proper' policy that meets the requirements of the Australian Prudential Regulation Authority Prudential Standard CPS 520, ~~and can provide evidence of that policy;~~
- The applicant must be able to provide evidence of that policy to ASX upon request at any time.
- (b) If the applicant holds an Australian financial services licence which authorises it to carry on business as a Participant, that the applicant must confirm to ASX Clear that it has in place measures to ensure its responsible managers are of good fame and character, as required in the ASIC Regulatory Guide ~~2.150~~105.33 and 2.162, which are also applied to any of its directors who are not responsible managers, ~~and can provide evidence of those measures; or~~
- The applicant must be able to provide evidence of those measures to ASX upon request at any time.
- (c) In any other case, the applicant must provide a statutory declaration ~~the following information~~ to ASX in relation to itself and from each of its directors confirming that ~~(with respect to Australia and all other foreign jurisdictions):~~
- (i) they have not been the subject of any previous bankruptcy, insolvency, receivership, administration, or similar event;
- (ii) they have not been charged with or convicted of any ~~charges or convictions for any~~ offences relating to dishonesty, fraud, financial markets-related conduct, or money laundering;
- (iii) they have not been the subject of any fines, civil penalties, banning, suspension or other disciplinary measures for financial markets- related conduct;
- (iv) they have not been the subject of any disciplinary action or adverse mention in a report made by, or at the request of, any government or governmental authority or agency, the Commission, ASX, an Approved Clearing Facility, an Approved Settlement Facility, and any other exchange, market operator or clearing and/or settlement facility;
- (v) they have not been refused ~~any refusal of~~ membership ~~or revocation of membership~~ of any financial markets-related, legal or accounting professional organisation or had such a membership revoked ~~body; and~~
- (vi) they have not had any refusal of an application for Participant status (or equivalent status) on another exchange, market ~~operator~~, Approved Clearing Facility or Approved Settlement Facility refused ~~(with consent provided by the applicant for ASX to obtain details from the relevant exchange, market operator, Approved Clearing Facility or Approved Settlement Facility); and~~

whether in Australia or elsewhere, or, if that is not the case, a statement to that effect and a detailed explanation of the circumstances involved.

~~(vii) — The applicant must also consent to for ASX Clear to obtaining~~ information on the credit worthiness of the applicant,

~~and that information must be acceptable to ASX Clear.~~

Purpose of amendment:

ASX is proposing to align its business integrity admission requirements across the ASX and ASX 24 markets and the clearing and settlement facilities that service those markets. This will simplify the admission process for applicants applying for admission to multiple markets and/or facilities.

**PROCEDURE 3.5.1 ~~APPLICANT TO MEET MANAGEMENT~~ ORGANISATIONAL
REQUIREMENTS**

~~(a) — ASX Clear prescribes the following standards for the purpose of the Rule~~

~~(b) — •Australian Standard on Compliance (AS 3806:2006);~~

~~(c) — •Australian / NZ ISO Risk Management — Principles and guidelines (AS/NZS ISO 31000:2009);~~

~~(d) — •Australian / NZS — Business Continuity — Managing disruption-related risk (AS/NZS 5050:2010);~~

~~(e) — •Australian Standard on Customer Satisfaction (AS ISO 10002:2006); and~~

~~(f) — •ASIC Regulatory Guide 104 and ASIC Regulatory Guide 105.~~

In order to satisfy ASX Clear that it meets the organisational requirements, an applicant must provide to ASX Clear a certification in the form prescribed by ASX Clear from time to time that the applicant has the resources and processes in place to comply with its obligations under the Rules.

For these purposes, “resources” include financial, technological and human resources and “processes” include management, supervision, training, business continuity and disaster recovery processes.

In providing this certification to ASX Clear the applicant must have regard to:

- the Rules;
- ASX Clear Operating Rules Guidance Note 1 Admission as a Participant;
- ASX Clear Operating Rules Guidance Note 9 Offshoring and Outsourcing;
- ASX Clear Operating Rules Guidance Note 10 Business Continuity and Disaster Recovery
- ASIC Regulatory Guide 104 Licensing: Meeting the general obligations;
- ASIC Regulatory Guide 105 Licensing: Organisational competence; and
- any other matters specified in the form prescribed by ASX Clear for these purposes.

If required by ASX Clear, the applicant must be able to demonstrate to the satisfaction of ASX Clear, at any time, the basis on which the certification is or was provided.

Purpose of amendment:

ASX is proposing to align its “organisational” admission requirements across the ASX and ASX 24 markets and the clearing and settlement facilities that service those markets. This will simplify the admission process for applicants applying for admission to multiple markets and/or facilities.

...

PROCEDURE 3.8.1 APPLICANTS INCORPORATED OR CARRYING ON BUSINESS OUTSIDE AUSTRALIA

If an applicant is incorporated or intends to carry on any part of its business as a Participant outside Australia:

- (a) ASX Clear may require that the applicant (or a Related Body Corporate) currently conducts clearing operations which are regulated by a foreign clearing and settlement facility, a foreign financial market or a foreign regulatory authority acceptable to ASX Clear; or
- (b) ASX Clear may require that the applicant is:
 - (i) a clearing and settlement facility which holds an Australian CS Facility licence; or
 - (ii) operates overseas as a clearing and settlement facility in accordance with the legal requirements of that jurisdiction and ASX Clear considers the applicant to be adequately regulated in that jurisdiction; and
- (c) ASX Clear may require the applicant (or persons connected with the applicant) to give an additional undertaking or undertakings governed by Australian law in respect of any matter which ASX Clear considers reasonable or in the interest of the public or ASX Clear including, without limitation, undertakings as to:
 - (i) the amount of resources and number of Employees to be located in Australia;
 - (ii) access by ASX Clear to records required to be kept under these Rules;
 - (iii) foreign taxes that might be payable;
 - (iv) the law governing the applicant's activities under the Rules and the applicant's submission to jurisdiction;
 - (v) whether the law of the applicant's incorporation would recognise protections which are substantially equivalent to those afforded by Australian law to clients' money and property in a winding-up of the applicant; and
 - (vi) the ranking of creditors on a winding-up of the applicant; and
- (d) ASX Clear may require the applicant to provide a legal opinion, from independent lawyers acceptable to ASX Clear, and paid for by the applicant, which deals with matters required by ASX Clear and which is acceptable to ASX Clear; and
- (e) ASX Clear may require a performance bond in the form and substance acceptable to ASX Clear; and
- (f) if the applicant proposes to conduct any Overseas Activity (as defined in Rule 4.19.1), ASX Clear may require the applicant to notify ASX Clear of the details of the proposed Overseas Activity and to demonstrate that the proposed Overseas Activity will comply with Rules 4.19.1.

Purpose of amendment:

ASX is proposing to align its admission requirements for applicants that are incorporated, or that intend to carry on business as a participant, outside Australia across the ASX and ASX 24 markets and the clearing and settlement facilities that service those markets. This will simplify the admission process for applicants applying for admission to multiple markets and/or facilities.

The requirements in Procedure 3.8.1 above largely replicate what was previously in Rule 3.8.1, with some relatively minor changes to align those requirements with other ASX rulebooks and the addition of paragraph (c)(iv) for consistency with other rulebooks.

SECTION 4

RIGHTS AND OBLIGATIONS OF PARTICIPANTS

~~PROCEDURE 4.1.1 — GENERAL COMPLIANCE~~

~~The continuing education requirements for Responsible Executives from 1 July 2004 are the successful completion of at least 8 hours (or 8 hours equivalent) Compliance Education every Year determined:~~

~~(a) — if the Responsible Executive is a member of:~~

- ~~• Australian Compliance Institute (ACI);~~
- ~~• Australian Financial Market Association (AFMA);~~
- ~~• Financial Planning Association (FPA);~~
- ~~• Securities and Derivatives Industry Association (SDIA);~~
- ~~• An Accountant Professional Standards Scheme recognised pursuant to Australian State or Federal Professional Standards legislation;~~
- ~~• A Solicitors Professional Standards Scheme recognised pursuant to Australian State or Federal Professional Standards legislation;~~
- ~~• Another professional association recognised by ASX Clear as providing equivalent quality and measurement standards of relevant continuing education as those above, or~~

~~by reference to the quality and measurement standards of continuing education or continuing professional development established by that professional body; or~~

~~(b) — otherwise, by reference to the quality and measurement standards of continuing education or continuing professional development established for their members by one of the professional bodies set out below:~~

- ~~• Australian Compliance Institute; or~~
- ~~• Securities and Derivatives Industry Association.~~

~~For the purpose of the Procedure:~~

- ~~• “Compliance Education” means education or professional development directly related to compliance obligations, policies, procedures and ethics with specific relevance to the Participant’s and Responsible Executives obligations under the ASX Operating Rules, the ASX Clear Operating Rules and the ASX Settlement Operating Rules.~~
- ~~• “Year” means the period 1 July to 30 June.~~

~~When a Participant appoints a person to the role of RE during a year, the Participant must be able to demonstrate to ASX Clear that the Responsible Executive has undertaken Compliance Education since the date of appointment as an RE with that Participant which satisfies the continuing education requirement pro-rata to the number of full months that the RE held that role during that Year.~~

~~Demonstrating compliance with Continuing Education requirements~~

~~It is the responsibility of the Participant to be able to demonstrate to ASX Clear that every Responsible Executive satisfies the continuing education requirements.~~

~~Each Participant will be required to provide a ‘Responsible Executive Continuing Education Self-Assessment Return’ by close of business on 31 July. These must be calculated on an annual basis for each preceding Year. The format of that return is set out in Annexure 6. These returns should be signed by a Director or an authorised delegate of the Participant and be submitted to ASX. The Participant will be required to retain copies of the records of the continuing education upon which it has based its return to demonstrate compliance with the ASX Clear Operating Rules and produce them to ASX Clear on request for a period of seven years from the end of the year under review.~~

Purpose of amendment:

ASX is proposing to remove the 'responsible executive' requirements from the ASX Clear Operating Rules. This includes Procedure 4.1.1.

...

PROCEDURE 4.4.3 FINANCIAL STATEMENTS

...

~~For convenience, a copy of the Key Risks and Internal Systems Statement, as prescribed under Rule S1.3.1 or Rule S2.6.2 or Rule 5.2.3, is provided in Annexure 4.4.3-2.~~

Purpose of amendment:

ASX is proposing to withdraw the requirement for participants to submit each year the ASX Clear Key Risks and Internal Systems Statement as an unnecessary administrative burden. Participants have an obligation under the ASX Clear Operating Rules to have appropriate processes in place to ensure compliance with those rules and this Statement does no more than confirm that participants are in compliance with one aspect of that obligation.

~~PROCEDURE 4.5.4 AUDIT OF INTERNAL CONTROLS PROCEDURES~~

~~Form of auditor's report acceptable to ASX Clear~~

~~The auditor's report on internal control procedures pursuant to section 989B(3) of the Corporations Act is ASIC Form FS71.~~

Purpose of amendment:

This deletion is associated with changes proposed above to ASX Clear Operating Rule 4.5.4. To reduce the administrative burden on participants, ASX is proposing to remove the requirement presently in Rule 4.5.4 for participants to lodge an ASIC Form FS 71 audit report annually with ASX and to replace that with an obligation simply to notify ASX where a significant issue has been identified by the auditor in that report. This Procedure is therefore no longer required.

...

~~PROCEDURE 4.12.1 PARTICIPANT TO SUBMIT DETAILS OF SIGNATORIES~~

~~A Participant must submit to ASX Clear a list of persons authorised by the Participant to sign documentation. The list must:~~

- ~~• be on Participant letterhead;~~
- ~~• specify the title and function of each person;~~
- ~~• show specimen signatures of any new authorised signatories;~~
- ~~• show the date the authorised signatory was appointed.~~

~~A Participant must notify ASX Clear in writing if any authorised signatories cease to be authorised by the Participant or if any new persons are given that authority.~~

Purpose of amendment:

ASX is proposing to delete Procedure 4.12.1 specifying the form in which participants must notify it of the appointment of, or any changes to, their authorised signatories. The matter is administrative in nature and it is not necessary to specify the form of notification in the Procedures.

...

PROCEDURE 4.19.1 FOREIGN PARTICIPANTS AND OTHER PARTICIPANTS WITH OVERSEAS ACTIVITY

For the purposes of Rule 4.19.1, the requirements are as follows:

- (a) provide prior written notification to ASX Clear including details of the proposed Overseas Activity;
- (b) obtain all necessary regulatory approvals from any relevant governmental agency or regulatory authority in Australia or elsewhere in respect of the Overseas Activity and provide a copy of those regulatory approvals to ASX Clear;
- (c) comply with the directions of ASX Clear and any relevant governmental agency or regulatory authority in Australia concerning the supervision of the Overseas Activity; and
- (d) not engage in Overseas Activity of a type which would result in ASX Clear becoming subject to the jurisdiction of any relevant government agency or regulatory authority outside Australia without the prior written consent of ASX Clear.

Note: This Procedure applies to all Participants who are incorporated and resident in Australia but locate aspects of their activities as a Participant overseas, regardless of where they are incorporated or carry on business.

Purpose of amendment:

As mentioned previously, as part of standardising the admission requirements for participants in its markets and facilities, ASX is proposing to introduce a uniform regime across those markets and facilities for offshoring and outsourcing. The new regime for offshoring and outsourcing will be based on the existing provisions in ASX and ASX 24 Operating Rules 1002 and 6400-6402 and the related Procedures, ASX Clear Operating Rules 3.8.1 and 4.19.1 – 4.19.4 and ASX Settlement Operating Rule 4.12.2, and will be standardised across all of ASX's markets and facilities.

To that end, ASX is proposing to move the particular requirements applicable to overseas activity from ASX Clear Operating Rule 4.19.1 to the Procedures.

...

PROCEDURE 4.22.1 RESPONSIBLE EXECUTIVE OBLIGATIONS

ASX Clear Initial Qualification Requirements for Responsible Executives

The initial qualification requirements for Responsible Executives are:

1. Satisfaction of the ASIC standards for skills and knowledge of a Responsible Manager as set out in ASIC Regulatory Guide 105; and

2. ~~(a) Attaining a mark of at least 65% in the ASX Clear Clearing & Settlement Responsible Executive Exam or ASX and ASX Clear Responsible Executives Exam (or their predecessors) in the 12 months preceding the date the Participant appoints them as a Responsible Executive.~~
- ~~(b) Attaining a mark of at least 65% in the ASX Clear Clearing & Settlement Responsible Executive Exam or ASX and ASX Clear Responsible Executives Exam (or their predecessors) at any time since 1 July 2001 and being able to demonstrate they have satisfied the CE requirements of Rule 4.1.1 for each subsequent Year since the date of passing the exam (whether in the employ of a Participant or not and whether in the role of a Responsible Executive or not for all or any part of that time) up to the date the Participant appoints them as a Responsible Executive.~~

~~“Year” means the period 1 July to 30 June.~~

~~An annual representation to Participant~~

~~Each Responsible Executive as at 30 June each year must provide a representation in the form set out in Annexure 5 to its Participant prior to 10 July each year. The Participant must retain copies of the representations for 7 years.~~

~~PART 1 – DELETED~~

~~PART 2 – DELETED~~

~~PART 3 – DELETED~~

Purpose of amendment:

ASX is proposing to remove the ‘responsible executive’ requirements from the ASX Clear Operating Rules. This includes Procedure 4.22.1.

SECTION 14

RISK MANAGEMENT

PROCEDURE 14.6.1

PARTICIPANT TO PROVIDE COVER (INCLUDING ADDITIONAL COVER)

...

2. Settlement of additional Cover

...

b. **Cash settlement facility**

All additional Cover provided in cash must be executed via Austraclear's Exigo system.

Clearing Participants ~~must are required to~~ advise ASX Clear of their Exigo and account details ~~by lodging an "Exigo Settlement Application" contained in Annexure 7 to ASX Clear Operating Rules Procedures~~ in the manner and form prescribed by ASX Clear from time to time.

Clearing Participants that are not Austraclear Participants will be required to arrange for an Austraclear Participant (such as a Related Entity or its Payments Provider (as defined in the ASX Settlement Operating Rules)) ("Austraclear Agent") to transfer funds on their behalf via Exigo and ~~provide advise ASX Clear of the~~ Exigo details in the ~~Exigo Settlement Application~~ manner and form prescribed by ASX Clear from time to time.

Purpose of amendment:

ASX is proposing to delete Annexure 7 (Austraclear Settlement Application) from the Annexures to the ASX Clear Operating Rules Procedures. The form is administrative in nature and it does not need to form part of the ASX Clear Operating Rules Procedures. This requires some consequential changes to Procedure 14.6.1.

ASX CLEAR OPERATING RULES PROCEDURES ANNEXURES

Delete the following Annexures:

ANNEXURE 3.1.8 (APPLICATION FOR AUTHORISATION TO CLEAR MARKET TRANSACTIONS EFFECTED THROUGH TWO OR MORE APPROVED MARKET OPERATORS)

ANNEXURE 3.2.2 (ATTESTATION BY DIRECTORS/RESPONSIBLE EXECUTIVES TO ASX CLEAR – PARTICIPANT’S KEY RISKS AND INTERNAL SYSTEMS STATEMENT FOR A CLEARING PARTICIPANT CLEARING FOR A MARKET PARTICIPANT CLEARING THROUGH MORE THAN ONE CLEARING PARTICIPANT)

ANNEXURE 3.2.3 (ATTESTATION BY CLEARING PARTICIPANT’S DIRECTORS TO ASX CLEAR – PARTICIPANT’S KEY RISKS AND INTERNAL SYSTEMS STATEMENT FOR A CLEARING PARTICIPANT CLEARING MARKET TRANSACTIONS EFFECTED THROUGH TWO OR MORE APPROVED MARKET OPERATORS)

ANNEXURE 4.4.3-2 (ATTESTATION BY DIRECTORS/RESPONSIBLE EXECUTIVES TO ASX AND/OR ASX CLEAR – KEY RISKS AND INTERNAL SYSTEMS)

ANNEXURE 5 (RESPONSIBILITIES OF RESPONSIBLE EXECUTIVE)

ANNEXURE 6 (RESPONSIBLE EXECUTIVE (RE) CONTINUING EDUCATION SELF-ASSESSMENTS)

ANNEXURE 7 (AUSTRACLEAR SETTLEMENT APPLICATION)

In Annexure 4.23.5 (Reconciliation of Client Funds) – delete “Responsible Executive” in the signature block and replace it with “Name”.

Purpose of amendment:

ASX is proposing to delete a number of forms in the Annexures to the ASX Clear Operating Rules Procedures. These forms are no longer required given the proposed Rule and Procedure changes mentioned previously.

ASX is also proposing to modify the signature block in Annexure 4.23.5 to reflect the removal of the requirement for participants to have “responsible executives”.

Annexure H

Proposed Changes to ASX Clear (Futures) Rules

PART 1 DEFINITIONS

Definitions

1.1 In these Rules, except where the content otherwise requires, words and expressions shall have the same meaning as in the Articles, provided that, except where the context otherwise requires the words and expressions in the first column in Rule 1.1 hereunder shall have the meaning assigned to them in the second column. In the absence of a contrary definition in these Rules, words and expressions shall have the same meaning as in the Exchange Operating Rules.

| <u>Words</u> | <u>Meanings</u> |
|--|--|
| ... | |
| <u>Admission Requirements</u> | <u>The requirements set out in Rule 4.2.</u> |
| ... | |
| <u>Clearing Message</u> | <u>An electronic message communicated through a Gateway.</u> |
| ... | |
| <u>Controller</u> | <u>In relation to a Clearing Participant, a person who controls the Clearing Participant.</u> <u>Note: For these purposes, "control" has the same meaning as in section 50AA of the Corporations Act (Rule 1.4).</u> |
| ... | |
| <u>Employee</u> | <u>In relation to a Clearing Participant, means a director, employee, officer, agent, representative, consultant or adviser of that Clearing Participant or any Related Body Corporate who is involved in its activities as a Clearing Participant.</u> |
| ... | |
| <u>Gateway</u> | <u>A hardware and software component which provides the communications interface between the Exchange System and the Clearing Participant's system.</u> |
| ... | |
| <u>Substantial Change in Control</u> | <u>In relation to a Clearing Participant means:</u> <u>(a) — The transfer of twenty percent (20%) or more of the issued capital of the Clearing Participant.</u> <u>(b) — The transfer of such lesser percentage of the issued capital of the Clearing Participant and/or the issue of new shares (or options in relation thereto) whereby one party becomes the holder of twenty percent (20%) or more of the issued capital of the Clearing Participant.</u> |

- ~~(c) A change of 50% or more in the composition of the Board of the Clearing Participant.~~
- ~~(d) Any transfer or issue of shares in any corporation which would result in a corporation becoming or ceasing to be a holding company of the Clearing Participant.~~
- ~~(e) A change of 50% or more in the composition of the Board of a holding company of the Clearing Participant.~~
- ~~(f) Any change in the partners of a Clearing Participant being a firm.~~
- ~~(g) The entering into any agreement the completion of which will result in the application of paragraphs (a) to (e) above.~~
- ~~(h) Any other event, agreement or act which in the reasonable opinion of the Board results in a substantial change in the control of the Clearing Participant.~~

~~And for the purposes of Rule 11.2 means the occurrence of one of the events referred to in paragraphs (a) to (f) since the admission of a Clearing Participant as a Clearing Participant or since the last approval of an event specified in the paragraph, given under Rule 11.2.~~

Purpose of amendment:

ASX is proposing to add new definitions of “Admission Requirements”, “Clearing Message”, “Employee” and “Gateway” to the ASX Clear (Futures) Operating Rules to facilitate some of the other amendments to those rules proposed below.

ASX is also proposing to add a new definition of “Controller” and remove the definition of “Substantial Change In Control”. This is part of simplifying and harmonising the requirements for participants in the ASX Clear and ASX Clear (Futures) facilities to notify ASX of a change in control.

...

Good Standing

1.2 ~~[Deleted]~~ For the purposes of these Rules a Clearing Participant or a prospective Clearing Participant may be deemed by the Board not to be in good standing if in the opinion of the Board:

- ~~(a) The Clearing Participant or prospective Clearing Participant is suspended as a Participant of the Exchange or a Related Exchange or of ASX Clear (Futures), or any disciplinary proceedings or enforcement action within the jurisdiction of the Exchange or a Related Exchange or ASX Clear (Futures) for which a penalty of suspension or expulsion from the Exchange or Related Exchange or ASX Clear (Futures) could be imposed are pending against the Clearing Participant or prospective Clearing Participant.~~
- ~~(b) Any proceedings for which a penalty of suspension or revocation of a license held under the Corporations Act or the revocation of an authorisation under the Securities Amendment Act 1988 of New Zealand or a similar penalty under the law of any other jurisdiction could be imposed are pending against the Clearing Participant or prospective Clearing Participant.~~

- ~~(c) — Arrangements satisfactory to the Exchange or a Related Exchange or ASX Clear (Futures), as the case may be, have not been made for the resolution of any claim, action or proceeding against the Clearing Participant or prospective Clearing Participant or any related company, affiliate or officer of such Clearing Participant or prospective Clearing Participant which in the opinion of the Exchange or a Related Exchange or ASX Clear (Futures), as the case may be, might adversely affect the goodwill or public image of the Exchange or a Related Exchange, its Participants or markets, or ASX Clear (Futures).~~
- ~~(d) — Arrangements satisfactory to the Exchange or a Related Exchange or ASX Clear (Futures) as the case may be have not been made for the payment of any moneys due by the Clearing Participant or prospective Clearing Participant to the Exchange or Related Exchange or ASX Clear (Futures).~~
- ~~(e) — A person who has been convicted (in Australia or New Zealand or any other jurisdiction) within the preceding 10 years of an offence involving fraud or dishonesty punishable upon conviction by imprisonment for three months or more or has within the last five years been convicted of an offence referred to in Part 2D.6 of the Corporations Act (or a similar offence in a jurisdiction other than Australia) or is an Insolvent under Administration within the meaning of the Corporations Act (or has similar status in a jurisdiction other than Australia including New Zealand):
 - ~~(i) — is a director, officer or partner of the Clearing Participant or prospective Clearing Participant;~~
 - ~~(ii) — is concerned or takes part in the management of the Clearing Participant or prospective Clearing Participant; or~~
 - ~~(iii) — has control, or substantial control, of the Clearing Participant or prospective Clearing Participant.~~~~
- ~~(f) — there is any subsisting matter which would constitute an event of Default under Rule 71.3 in respect of the Clearing Participant or prospective Clearing Participant.~~

Purpose of amendment:

ASX is proposing to replace the “good standing” admission requirement in the ASX Clear (Futures) Operating Rules with a business integrity admission requirement that will be consistent across all the ASX rulebooks. As a consequence, the definition of “good standing” in ASX Clear (Futures) Operating Rule 1.2 is proposed to be deleted.

PART 2 GENERAL

4 ADMISSION REQUIREMENTS ~~BECOMING A CLEARING PARTICIPANT~~

4.1 Subject to Rules 4.4A and 4.5, ASX Clear (Futures) will admit an applicant as a Clearing Participant if the applicant:

- (a) applies to ASX Clear (Futures) by completing an application in the form prescribed by ASX Clear (Futures);
- (b) satisfies the Admission Requirements; and
- (c) pays to ASX Clear (Futures) the relevant application fee determined by ASX Clear (Futures). ~~A corporation (or in special circumstances to the satisfaction of the Board and with the consent of the Board a person or body other than a corporation not being an individual) may apply to become a Clearing Participant with access to the facilities of ASX Clear (Futures).~~

4.2 For an applicant to be eligible for admission as a Clearing Participant, the applicant must: ~~An applicant who wishes to be approved as a Clearing Participant shall lodge with the Board:~~

- (a) be a body corporate carrying on business in its own right and not in the capacity of a trustee of a trust;
- (b) hold:
 - (i) if such a licence is required by the Corporations Act, an Australian financial services licence which authorises the applicant to carry on its business as a Clearing Participant; and
 - (ii) if the applicant is incorporated or carries on business in a place outside Australia, any licence or authorisation required under the law of that place for it to carry on its business as a Clearing Participant;
- (c) be of high business integrity;
- (d) meet the Financial Requirements; and
- (e) have adequate resources and processes to comply with its obligations as a Clearing Participant under these Rules.

For these purposes, "resources" include financial, technological and human resources and "processes" include management, supervision, training, business continuity and disaster recovery processes.

In assessing whether an applicant meets these requirements, ASX Clear (Futures) may have regard to the matters set out in the Procedures and to any other matters it considers appropriate.

- ~~(a) an application in the Prescribed form signed by the applicant;~~
- ~~(b) such information concerning the applicant and supported by such evidence as the Board may prescribe~~
- ~~(c) an undertaking by the applicant in the Prescribed form to abide by these Rules as amended from time to time, if the application is granted; and~~
- ~~(d) an application fee of an amount determined from time to time in accordance with Rule 3.2.~~

Explanatory Note

Refer to Procedure 4.2A Becoming a Clearing Participant.

4.3 ASX Clear (Futures) may request an applicant to provide such information as ASX Clear (Futures) considers necessary to establish whether the applicant satisfies the Admission Requirements. ~~Where the applicant is a prospective Participant or Dealer of the Exchange the applicant shall lodge or cause to be lodged with ASX Clear (Futures) a copy of the application to become an Exchange Participant or Dealer, as the case may be, made by the prospective Participant or Dealer. The Board may rely on~~

~~any information contained in such application as if it formed part of its application for approval as a Clearing Participant. (Amended 2/1/02)~~

4.3A If an applicant is incorporated or intends to carry on any part of its business as a Clearing Participant outside Australia, then ASX Clear (Futures) may impose additional requirements for it to be eligible for admission as a Clearing Participant, including (but not limited to) those specified in the Procedures.

4.4 Subject to Rule 4.4A, ASX Clear (Futures) will use all reasonable endeavours to make its decision whether to accept or reject an application for admission as a Clearing Participant within a reasonable time following the receipt of the application.~~In considering the application, the Board may call for the information provided pursuant to Rule 4.2(b) and such other information as it considers necessary and where the Board is satisfied that:~~

- ~~(a) — the applicant satisfies or will satisfy the Financial Requirements;~~
 - ~~(b) — the applicant is in good standing;~~
 - ~~(c) — the applicant is of good character, high business integrity and financial probity;~~
 - ~~(d) — in the case of a Corporation, the directors of the applicant, those concerned in its management and those who have control or substantial control of the corporation are of good character and of high business integrity and financial probity;~~
 - ~~(e) — the applicant has or will have managerial, operational, financial and appropriate complementary business continuity arrangements in place to enable it to meet its ongoing obligations as a Clearing Participant pursuant to the Rules and in particular is in a position to make immediate transfer of funds to meet its obligations;~~
 - ~~(f) — in the case of a Corporation the applicant is incorporated in Australia or registered in Australia as a foreign company unless the corporation does not carry on business in Australia and this requirement is waived by the Board on condition that the applicant has nominated an address for service in Australia, and on such other conditions as it sees fit;~~
 - ~~(g) — the applicant satisfies or will satisfy any legal requirements either in Australia or elsewhere to operate as a Clearing Participant; and~~
 - ~~(h) — the applicant is otherwise a fit and proper person to be a Clearing Participant,~~
- ~~the Board may in its absolute discretion approve the application.~~

4.4A The decision as to whether to grant admission as a Clearing Participant is at the absolute discretion of ASX Clear (Futures). ASX Clear (Futures) may grant or refuse admission without giving any reasons.

4.5 In addition to the condition referred to in Rule 4.7A, where ASX Clear (Futures) admits an applicant as a Clearing Participant, ASX Clear (Futures) may at that time, or at any later time, impose any conditions on the Clearing Participant which it considers appropriate. ASX Clear must notify the applicant or the Clearing Participant (as applicable) of any condition imposed under this Rule 4.5 in writing.~~Any meeting of the Board held for the purpose of approving an application shall only be held on notice in writing of not less than forty-eight (48) hours given to all members of the Board and any resolution approving an application to become a Clearing Participant shall require the affirmative votes of not less than seventy-five per cent (75%) of all Board members present and entitled to vote at such meeting. The Board shall not be obliged to furnish any reason for its decision. The Board may as a condition of its approval impose such conditions on the applicant as it sees fit and the applicant shall comply with any conditions. Any such conditions may be required by the Board to be complied with before or after admission as a Clearing Participant or may be of a continuing nature.~~

4.6 An applicant or Clearing Participant (as applicable) may appeal to the Appeal Tribunal against a decision of ASX Clear (Futures) not to admit it as a Clearing Participant or to impose a condition under Rule 4.5 in accordance with the provisions of the ASX Enforcement and Appeals Rulebook.~~An approval of the Board to admit a Clearing Participant shall not take effect until the Clearing Participant has paid to ASX Clear (Futures):~~

- ~~(i) — an admission fee of such amount as the Board may determine from time to time; and~~

~~(ii) an annual fee or a proportion thereof, as the Board may determine in each case.~~

4.7 ~~Where ASX Clear (Futures) imposes a condition on the admission of a Clearing Participant under Rule 4.5, a breach of that condition by the Clearing Participant does not automatically result in the termination of the admission of the Clearing Participant. Any breach of a condition is dealt with in accordance with Part 7. Unless the requirements of clause 4.6 are satisfied within two months of the date of the approval by the Board or such further time as the Board may in its absolute discretion allow, the approval shall lapse.~~

...

4.10 The requirements of Rule 4.24 (a) to (e) are continuing. ~~ASX Clear (Futures) may impose or vary any conditions it sees fit on admission at any time. A Clearing Participant shall at all times ensure that these requirements are satisfied and otherwise comply with the Rules. A Clearing Participant shall immediately notify ASX Clear (Futures) if it breaches or is likely to breach any of these requirements.~~

Purpose of amendment:

ASX is proposing to align the admission requirements across all operating rulebooks. The changes proposed in ASX Clear (Futures) Operating Rules 4.1 – 4.7 will broadly align the admission regime for ASX Clear (Futures) participants with the regime applicable to ASX Clear Participants.

ASX is proposing to add a new ASX Clear (Futures) Operating Rule 4.3A that will enable ASX to impose additional admission requirements in relation to any applicant that is incorporated or carrying on business outside Australia. This is part of the uniform regime ASX is proposing across its markets and facilities to regulate offshoring and outsourcing.

New ASX Clear (Futures) Operating Rule 4.4A will remove any doubt that admission to the ASX Clear (Futures) facility is at the absolute discretion of ASX, while new ASX Clear (Futures) Operating Rule 4.5 will remove any doubt that ASX Clear (Futures) can impose conditions on the admission of a Clearing Participant to that facility, both at the time of admission and thereafter.

An applicant currently has a right of appeal to the ASX Appeals Tribunal under the ASX Enforcement and Appeals Rulebook if ASX Clear (Futures) rejects its applicant for admission to the ASX Clear (Futures) facility.

In light of the introduction of proposed new ASX Clear (Futures) Operating Rule 4.5, ASX is also proposing to amend the ASX Enforcement and Appeals Rulebook to include a right of appeal to the ASX Appeals Tribunal where ASX imposes a condition on the admission of a Clearing Participant to which the Clearing Participant objects (see Annexures K and L below).

Undertaking to Abide by the Rules

...

4.11 ...

(f) Where any Clearing Participant:

- (i) undertakes any action, or course of actions which is contrary to a provision of the Rules or the Procedures; or
- (ii) fails for any reason to act in accordance with a provision of the Rules, including, without limitation, failure to maintain any document or record, failure to give any notice or notification, or failure to comply with an undertaking or condition, required by or imposed under the Rules or the Procedures; or

- (iii) fails to comply with or continue to comply with any requirement or condition for application for Participation Entitlements;

then the Clearing Participant shall thereby have committed a breach of the Rules and/or the Procedures (as the case may be) ~~relevant provisions of the Rules~~.

Purpose of amendment:

ASX is proposing to make a minor amendment to ASX Clear (Futures) Operating Rule 4.11(f) for consistency with other rulebooks.

Responsibility for individuals involved in business

4.11A A Clearing Participant is responsible for all actions and omissions of persons involved in its business as a Clearing Participant including, without limitation, its Employees.

Notification of significant breach

4.11B Where a Clearing Participant has committed a breach of the Rules and/or the Procedures under Rule 4.11(f) and that breach is significant, the Clearing Participant must immediately notify ASX Clear (Futures).

For the purposes of determining whether a breach is significant a Clearing Participant must have regard to the following:

- (a) the number or frequency of similar breaches;
- (b) the impact of the breach on the Clearing 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 Clearing Participant's arrangements to ensure compliance with the Rules and Procedures is inadequate;
- (d) the actual or potential financial loss to clients of the Clearing Participant, or the Clearing Participant itself, arising from the breach; and
- (e) any other matters specified by ASX Clear (Futures) from time to time.

4.11C A Clearing Participant must ensure that all information which the Clearing Participant or its Employees give to ASX Clear (Futures) is complete, accurate and not misleading. If the Clearing Participant becomes aware that information which it, or its Employees, have given previously to ASX Clear (Futures) was incomplete, inaccurate or misleading, the Clearing Participant must promptly notify ASX Clear (Futures) In Writing.

Purpose of amendment:

ASX is proposing to introduce a new ASX Clear (Futures) Operating Rule 4.11A to remove any doubt that a participant is responsible for all actions and omissions of persons involve in its business as a participant, including third parties to whom it has outsourced relevant business activities.

ASX is also proposing to introduce into the ASX Clear (Futures) Operating Rules an obligation for a Clearing Participant to notify ASX of any significant Rule or Procedure breach (ASX Clear (Futures) Operating Rule 4.11B). This will replace the obligation in this regard that currently appears in ASX Clear (Futures) Operating Rule 4.10 but which is somewhat lost within that rule.

ASX is also proposing to introduce into the ASX Clear (Futures) Operating Rules an obligation for a Clearing Participant to notify ASX where information previously supplied to ASX is incomplete, inaccurate or misleading (ASX Clear (Futures) Operating Rule 4.11C).

These changes will align the ASX Clear (Futures) Operating Rules with other ASX rulebooks in these respects.

...

General Conduct of Clearing Participants

4.13 No Clearing Participant shall:

- (a) Deal on behalf of a person other than in accordance with instructions accepted by the Participant from that person.
- (b) Cheat, defraud, or deceive or attempt to cheat, defraud, or deceive any Client.
- (c) Make or cause to be made to a Client a report, or enter or cause to be entered for a Client a record, which report or record the Participant knows (or ought reasonably to know) to be false.
- ~~(d) Submit information to ASX Clear (Futures) or its agents which the Clearing Participant knows (or ought reasonably to know) to be false or misleading.~~

Purpose of amendment:

ASX is proposing to delete ASX Clear (Futures) Operating Rule 4.13(d), in light of the new notification obligation it is proposing to add in ASX Clear (Futures) Operating Rule 4.11C above.

4.14 Subject to Rule 4.15 it shall be the responsibility of each Clearing Participant:

- ~~(aa) To provide to ASX Clear (Futures) a copy of a prescribed audit report within three (3) months of its financial year end.~~
- (a) To provide to ASX Clear (Futures) an annual audit certificate in the prescribed form within three (3) months of its financial year end unless the Clearing Participant is an Australian Bank.
- (aa) To notify ASX Clear (Futures) In Writing if an auditor has identified a significant issue in an ASIC Form FS 71 or equivalent report lodged with the Commission pursuant to section 989B(3) of the Corporations Act.
- (ab) To notify ASX Clear (Futures) In Writing of:

- (i) any changes to a Clearing Participant's financial year end, within 10 Business Days of the change taking effect; and
 - (ii) the appointment, removal or resignation of an auditor, no more than 10 Business Days after the event.
- (ac) Unless the Clearing Participant is an Australian ADI, to provide to ASX Clear (Futures) annually by 31 July, a copy of the Clearing Participant's group structure chart as at the preceding 30 June. The chart should show the Clearing Participant's corporate ownership structure from its ultimate holding company to the Clearing Participant and from the Clearing Participant to all of its subsidiaries (including any nominee company). It must also show the relationship between the Clearing Participant and any other entity with which it has inter-group balances.
- (b) To provide to ASX Clear (Futures) a copy of any licence or approval granted to it by a regulatory authority to enable it to carry on its business as a Clearing Participant and to advise ASX Clear (Futures) immediately of any variation-change to the conditions of such licence or approval affecting its activities as a Clearing Participant ~~or of the suspension or cancellation of such licence.~~
- ~~(c) Not to employ any person who has been a Clearing Participant (or a Director, partner, employee or representative of a Clearing Participant), without first obtaining the written approval of ASX Clear (Futures), if that person has to the knowledge of the Clearing Participant taken part or been concerned in any failure to comply with the Rules which failure has been found to have occurred by the Board or ASX Clear (Futures) under Rule 10, and where the Board or ASX Clear (Futures) has determined (at the time that action is taken under Rule 10 or at some later time) that this provision shall apply in relation to the person.~~
- ~~For the purposes of this sub-clause (c) the words "to employ" and cognate expressions shall include agreeing or arranging with a person for that person to act as the Clearing Participant's representative in relation to transactions cleared by ASX Clear (Futures).~~
- (c) To notify ASX Clear (Futures) In Writing of the following changes before they become effective:
- (i) any change to the Clearing Participant's name, or any name under which the Clearing Participant carries on business as a Clearing Participant; or
 - (ii) any change to any address at which the Clearing Participant carries on business as a Clearing Participant.
- The notice must include full details of the change.
- (d) To advise ASX Clear (Futures) In Writing ~~of any change in its partners, Directors or shareholders~~ within ~~twenty-one~~ ten (210) Business Days ~~of the appointment, resignation or removal of a director~~ such occurring provided that in the case of a listed public company it shall be deemed sufficient compliance with this paragraph in relation to shareholders if the Clearing Participant provides to ASX Clear (Futures) copies of all notifications given by it to the home stock exchange on which the Clearing Participant is listed, or if it is not listed then copies of notices served upon it pursuant to any law requiring shareholders to disclose a share holding in excess of five per cent (5%) of the issued capital of that Clearing Participant or such other percentage as may be provided for in the Corporations Act for the purposes of ascertaining substantial shareholding.
- (da) To notify ASX Clear (Futures) In Writing immediately if a person who is not a Controller becomes a Controller or a person who is a Controller ceases to be a Controller;
- (db) To notify ASX Clear (Futures) In Writing immediately if there is any other material change in information concerning its business as a Clearing Participant from that previously provided to ASX Clear (Futures).

(e) ~~If the Participant acts for any person other than itself or a Related Body Corporate, To effect and maintain such form of professional indemnity (or equivalent) insurance in accordance with the Procedures as ASX Clear (Futures) may from time to time determine to be appropriate to protect the interests of Clients of the Clearing Participant.~~

(ea) To:

(i) submit to ASX Clear (Futures), in the manner and form prescribed by ASX Clear (Futures) from time to time, details of persons who are authorised by the Clearing Participant to sign documentation and to deal with clearing issues in connection with the operation of its business as a Clearing Participant; and

(ii) promptly notify ASX Clear (Futures) In Writing if any of the persons whose names are submitted under this Rule 4.14(ea) cease to be authorised by the Clearing Participant to sign the relevant documentation or to deal with clearing issues or if any new person is given that authority.

ASX Clear (Futures) is entitled to rely on the list referred to in Rule 4.14.ea(i) as updated from time to time under Rule 4.14.ea(ii) as evidence that the persons whose names are on the list at any given time are authorised to sign on behalf of the Clearing Participant documentation presented to ASX Clear (Futures) or to deal with clearing issues in connection with the operation of its business as a Clearing Participant.

Nothing in this Rule 4.14(ea) limits the persons whom ASX is entitled to assume are authorised by the Clearing Participant to sign documentation and to deal with issues in connection with the operation of its business as a Clearing Participant or the operation of Rule 4.11A.

(f) To notify ASX Clear (Futures) In Writing immediately if the Clearing Participant becomes aware of any event or circumstance which adversely affects or may adversely affect its financial position or solvency or its ability to comply with the Rules or the Procedures other upon the happening of any one or more of the following:

(i) ~~the appointment of a receiver or liquidator in respect of the property of the Clearing Participant; and/or~~

(ii) ~~the bankruptcy of any partner or Director of the Clearing Participant.~~

....

(h) ~~[Deleted] To maintain separate internal records of its own orders and trading, showing:~~

(i) ~~the time and date of receipt of instructions;~~

(ii) ~~the nature of the instructions received;~~

(iii) ~~the time and date of transmission of those instructions; and~~

(iv) ~~the time and date of execution of those instructions,~~

~~for a period of not less than seven (7) years.~~

...

(m) ~~Not knowingly to deal on behalf of any Director, partner or employee of any other Clearing Participant, entitled to deal on behalf of Clients, or on behalf of any account in which such Director, partner or employee has an interest either direct or indirect. For the purpose of this sub-clause "employee" shall include persons who as a representative of the Clearing Participant advise or solicit instructions from persons or corporations in relation to transactions cleared by ASX Clear (Futures). The provisions of this sub-clause shall not apply to clearing by a Clearing Participant through another Clearing Participant.~~

- ~~(n) Not to advertise or permit any other person, firm or corporation over which the Clearing Participant has control to advertise in any manner which may be false or misleading or prejudicial to the goodwill and public image of ASX Clear (Futures) or Clearing Participants.~~
- ~~(o) Not to issue, or cause to be issued, any unsolicited business communication In Writing to any person or persons (such expressions not to include companies listed on any Australian Stock Exchange for the purpose of this clause other than its Client without first obtaining the written approval of ASX Clear (Futures)).~~
- (m) To notify ASX Clear (Futures) In Writing upon commencing or becoming aware that
- (i) a Clearing Participant commences legal proceedings against, or has legal proceedings commenced against it by, another Clearing Participant, a Trading Participant, the Commission or other regulatory authority or a Client in connection with their role as a Clearing Participant; and
- (ii) those legal proceedings may affect the operations of ASX Clear (Futures) or the interpretation of the Rules.
- (n) To notify ASX Clear (Futures) In Writing on or before the next Business Day, if the Clearing Participant is informed by the Commission or its delegates (or any other person authorised under the Corporations Act), an exchange, a market operator, a clearing and/or settlement facility or a regulatory body that action is being or may be taken against the Clearing Participant or any of its Employees that relates in any way to its activities as a Clearing Participant.
- (o) To notify ASX Clear (Futures) as soon as practicable if it is unable to communicate reliably with the Exchange System.
- Note: Clearing Participants should also refer to Rules 4.11B and 4.11C for self-reporting requirements.

Purpose of amendment:

To reduce the administrative burden on participants, ASX is proposing to remove the requirement presently in ASX Clear (Futures) Operating Rule 4.14(aa) for participants to lodge an ASIC Form FS 71 audit report annually with ASX and to replace that with an obligation simply to notify ASX where a significant issue has been identified by the auditor in that report.

ASX is proposing to make minor amendments to ASX Clear (Futures) Operating Rule 4.14(b) for consistency with other ASX rulebooks.

ASX is proposing to delete the prohibition in ASX Clear (Futures) Operating Rule 4.14(c) preventing ASX Clear (Futures) participants from employing someone who has been involved in a breach of the ASX Clear (Futures) Operating Rules without the approval of ASX. This is not required in other ASX rulebooks. ASX notes that proposed new ASX Clear (Futures) Operating Rule 4.14(o) will require participants to notify ASX of regulatory action against employees and this notification, in conjunction with ASX's enforcement powers in relation to rule breaches generally, is sufficient for ASX's purposes.

ASX is proposing to modify ASX Clear (Futures) Operating Rule 4.14(d) for consistency with other ASX rulebooks and to delete the requirement for ASX Clear (Futures) participants to notify it of changes to partners and shareholders. This is not necessary and not required under other ASX rulebooks.

For consistency with other ASX rulebooks, ASX is proposing to replace the obligation in ASX Clear (Futures) Operating Rule 4.14(f) for ASX Clear (Futures) participants to notify ASX of the appointment of a receiver or liquidator and/or the bankruptcy of any partner or director with an obligation to notify ASX of an event that will adversely affect the participant's financial position or solvency.

ASX is proposing to delete former ASX Clear (Futures) Operating Rule 4.14(h). It deals with the maintenance of trading records for principal trading, something that is regulated by the Corporations Act and the ASX 24

Operating Rules and that has no place in the ASX Clear (Futures) Operating Rules.

ASX is proposing to delete former ASX Clear (Futures) Operating Rule 4.14(m), since it is largely covered by the Corporations Act.

ASX is proposing to delete former ASX Clear (Futures) Operating Rules 4.14 (n) and (o), as ASX no longer considers them necessary.

Also for consistency with the notification obligations in other ASX rulebooks, ASX is also proposing to introduce new notification obligations in the ASX Clear (Futures) Operating Rules for a Clearing Participant to notify ASX in writing of:

- any changes to its financial year end (ASX Clear (Futures) Operating Rule 4.14(ab)(i));
- the appointment, removal or resignation of its auditor (ASX Clear (Futures) Operating Rule 4.14(ab)(ii));
- any change in its name or address (new ASX Clear (Futures) Operating Rule 4.14(c));
- any change in controller (ASX Clear (Futures) Operating Rule 4.14(da));
- any other material change in information concerning its business as a Clearing Participant from that previously provided to ASX Clear (Futures) (ASX Clear (Futures) Operating Rule 4.14(db));
- the appointment of, or changes in, its authorised signatories (ASX Clear (Futures) Operating Rule 4.14(ea));
- legal proceedings that may affect the operations of ASX Clear (Futures) or the interpretation of the Rules (new ASX Clear (Futures) Operating Rule 4.14(m));
- regulatory action relating to its activities as a Clearing Participant (new ASX Clear (Futures) Operating Rule 4.14(n)); and
- it being unable to communicate with the ASX Clear (Futures) (new ASX Clear (Futures) Operating Rule 4.14(o)).

ASX is also proposing to introduce a requirement (ASX Clear (Futures) Operating Rule 4.14(ac)) for non-ADI participants to provide to ASX annually by 31 July, a copy of the participant's group structure chart as at the preceding 30 June. ASX requires this information to facilitate its review of participant capital returns and the clearing house's compliance with the Financial Stability Standards. The information helps ASX in understanding the relationship between participants and other group entities and the treatment of intergroup balances. It also helps to identify affiliated clearing participants for capital stress testing.

Currently ASX serves written requests on ASX Clear (Futures) participants each year to provide this information. Adopting ASX Clear (Futures) Operating Rule 4.14(ac) above will eliminate the need for these annual written requests.

...

Foreign Participants and other Participants with Overseas Activity

- 4.15A (a) A Clearing Participant that proposes to locate or relocate any part of its business as a Clearing Participant (including, without limitation, any Gateway or other means of communicating Clearing Messages to ASX Clear (Futures)), or to locate or relocate any Employees, outside Australia (the "Overseas Activity") must comply with the requirements set out in the Procedures.
- (b) If a Clearing Participant is incorporated outside Australia or conducts part of its business as a Clearing Participant outside Australia and:

- (i) any tax or duty of any kind would be liable to be paid by ASX Clear (Futures), a Related Body Corporate of ASX Clear (Futures) or any other person bound by these Rules (each an "Entity");
- (ii) the Clearing Participant would be required by any law or regulation to withhold payment of an amount or deduct a tax or duty of any kind from an amount payable by it to any Entity; or
- (iii) an Entity or Entities are required by any law or regulation to withhold payment of an amount or deduct a tax or duty of any kind from an amount payable by the Entity or Entities,

in respect of any transaction or agreement between that Clearing Participant and any other Entity or Entities and that duty or tax would not be liable to be paid or would not be required to be withheld or deducted if the Clearing Participant were incorporated in Australia and conducting its business as a Clearing Participant wholly in Australia, then the Participant must disclose to each relevant Entity that the duty or tax may be payable, or withholding or deduction may have to be made, before the relevant transaction or agreement to which the duty or tax relates is entered into or instructions are accepted. The disclosure must be In Writing and include the nature of the duty, tax or withholding and the amount of the likely duty, tax or withholding or the appropriate rate of duty or tax.

- (c) Without limiting any other indemnity given by a Clearing Participant under these Rules, each Clearing Participant indemnifies ASX Clear (Futures) in respect of any loss or damage caused to ASX Clear (Futures) as a result of a failure by that Clearing Participant to observe the requirements of Rules 4.15A(a) – (c).
- (d) A Clearing Participant must ensure, even if part of its business as a Clearing Participant or some of its Employees are located outside Australia, that it has in place appropriate arrangements so that the Clearing Participant and ASX Clear (Futures) (and Related Bodies Corporate of ASX Clear (Futures)) can communicate with each other and receive each other's responses quickly on a day-to-day operational basis and so that the Clearing Participant can promptly comply with the Rules or a request of ASX Clear (Futures) (or a Related Body Corporate of ASX Clear (Futures)).
- (e) A Clearing Participant that is not incorporated or registered as a foreign company under the Corporations Act must:
 - (i) appoint an agent, as approved by ASX Clear (Futures), which is resident in Australia for service of process in Australia;
 - (ii) provide ASX Clear (Futures) as soon as practicable with a copy of any agent's acceptance of such appointment;
 - (iii) inform ASX Clear (Futures) of the intended effective date of any agent ceasing for any reason to act as agent for the Clearing Participant; and
 - (iv) if paragraph (c) applies, appoint as soon as practicable, and in any case before an outgoing agent ceases acting as agent for the Clearing Participant, a new agent, as approved by ASX Clear (Futures).

Purpose of amendment:

As part of standardising the admission requirements for participants in its markets and facilities, ASX is proposing to introduce a uniform regime across those markets and facilities for offshoring and outsourcing. This regime will recognise and facilitate the increasing trend for participants to offshore some of their activities to regional centres of excellence and to use specialist outsourcers for particular activities. It will also ensure that ASX has an appropriate rule framework to regulate offshored and outsourced activities across all of its markets and facilities.

The new regime for offshoring and outsourcing will be based on the existing provisions in ASX and ASX 24 Operating Rules 1002 and 6400-6402 and the related Procedures, ASX Clear Operating Rules 3.8.1 and 4.19.1 – 4.19.4 and ASX Settlement Operating Rule 4.12.2, and will be standardised across all of ASX's markets and facilities.

Proposed ASX Clear (Futures) Operating Rule 4.15A is part of that regime.

...

8 FINANCIAL REQUIREMENTS

...

8.5 (a) A Clearing Participant shall immediately advise ASX Clear (Futures) if:

...

(iv) its financial position has altered in such circumstances as are Prescribed in the Schedules;

~~(v) an event of Default occurs under By-law 71, or the Clearing Participant has reasonable grounds to suspect that an event of Default may occur.~~

...

~~The Managing Director shall immediately advise the Board of any such notice.~~

Purpose of amendment:

ASX is proposing to remove ASX Clear (Futures) Operating Rule 8.5(a)(v), since it replicates the provisions in ASX Clear (Futures) Operating Rule 71.1(a) requiring notification of actual or potential events of default, and also to remove the redundant reference to the Managing Director at the end of ASX Clear (Futures) Operating Rule 8.5.

...

11 RESIGNATION ~~AND CHANGE IN CONTROL~~

Resignation

11.1 (a) A Clearing Participant may give notice of resignation in respect of one or more of its authorisations to clear a category or categories of Market Contracts to ASX Clear (Futures).

If it notifies that it is resigning all of its authorisations then it is taken to also notify its resignation as a Clearing Participant.

- (b) Resignation is not effective unless:
- (1) the Clearing Participant has given notice of resignation in writing to ASX Clear (Futures);
 - (2) ASX Clear (Futures) confirms to the Clearing Participant in writing that the Clearing Participant has satisfied the following conditions:
 - (A) it has performed all of its accrued obligations under the Rules (including but not limited to the payment of all fees);
 - (B) it is not the subject of any disciplinary proceedings or enforcement action within the jurisdiction of ASX Clear (Futures);
 - (C) it has no Open Contracts applicable to the authorisation in respect of which it has given notice of resignation.
- ASX Clear (Futures) will provide such confirmation, or reasons why such confirmation cannot be given, within 5 Business Days of receipt of a written request from a Clearing Participant which has given notice of resignation.
- (c) Resignation will be effective at the end of the last day of the quarter in which the Clearing Participant meets the conditions in (1) and (2) above, provided those conditions are met at least 30 days prior to the last day of the quarter. If the Clearing Participant meets those conditions less than 30 days prior to the last day of the quarter, the Clearing Participant's resignation will be effective at the end of the last day of the following quarter. For these purposes, quarters are as defined in Schedule 10.

Change in Control

~~11.2 — Where there is or is proposed to be a Substantial Change in Control of a Clearing Participant the Clearing Participant shall advise ASX Clear (Futures) forthwith in writing giving full particulars of such change. The Board shall consider such change and may in its absolute discretion approve such change.~~

Purpose of amendment:

As part of aligning the notification obligations across its various rulebooks, ASX is proposing to delete the requirement in ASX Clear (Futures) Operating Rule 11.2 requiring clearing participants to notify ASX of, and to seek ASX's approval to, a 'substantial change in control' and to replace it with the new obligation in ASX Clear (Futures) Operating Rule 4.14(da) above to notify ASX of a change in 'controller' (as defined in ASX Clear (Futures) Operating Rule 1.1).

This is part of simplifying and harmonising the requirements for participants in the ASX Clear and ASX Clear (Futures) facilities to notify ASX of a change in control.

PART 7 PROCEDURES ON A DEFAULT

...

71.3 Events of Default referred to in Rule 71.1 are where:

...

(g) ~~the Clearing Participant is suspended, expelled or terminated as a member of any Australian or overseas, futures, securities, commodity or stock exchange or is subject to sanctions by any Australian or overseas regulatory authority~~ the Clearing Participant or any of its Employees is the subject of any regulatory or disciplinary action by any exchange, market operator, clearing and settlement facility, the Commission or any other regulatory authority or if the Clearing Participant becomes aware that any Trading Participant for which it clears Market Transactions or any of the Trading Participant's Employees is the subject of any action of that type in connection with its activities as a Trading Participant;

...

(m) the Clearing Participant acts fraudulently or in a misleading or deceptive manner with respect to any Open Contract or Market Contract the registration of which gave rise to an Open Contract;

(n) the Clearing 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 (Futures); and

(oA) any other event or series of events, whether related or not, occurs (or appears likely to occur) which in the opinion of the Board or Managing Director has (or appears likely to have) a material effect on the capacity of the Participant to meet its obligations to ASX Clear (Futures).

Purpose of amendment:

ASX is proposing to amend and extend ASX Clear (Futures) Operating Rule 71.3(g) for consistency with a similar requirement in the existing ASX Clear Operating Rule 19.2.3(c) (which is proposed to be relocated to ASX Clear Operating Rule 19.1A.1(c)). The amendment will also include regulatory action against Employees as a potential event of default.

ASX is also proposing to include in the ASX Clear (Futures) Operating Rules as an event of default a Participant failing to comply, or indicating 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 (Futures). This is to align that rulebook with similar provisions under other ASX rulebooks.

Annexure I

Proposed Changes to ASX Clear (Futures) Procedures

Rule 4.2(c) Business Integrity Requirements

In order to satisfy ASX Clear (Futures) that it meets Rule 4.2(c), an applicant must satisfy one of the following requirements:

(a) If the applicant is an authorised deposit-taking institution which has been granted authority to carry on a banking business in Australia under the Banking Act 1959, the applicant must confirm to ASX Clear (Futures) that it has in place a 'fit and proper' policy that meets the requirements of the Australian Prudential Regulation Authority Prudential Standard CPS 520.

The applicant must be able to provide evidence of that policy to ASX Clear (Futures) upon request at any time.

(b) If the applicant holds an Australian financial services licence which authorises it to carry on business as a Clearing Participant, the applicant must confirm to ASX Clear (Futures) that it has in place measures to ensure its responsible managers are of good fame and character, as required in ASIC Regulatory Guide 105.33 and 2.162, which are also applied to any of its directors who are not responsible managers.

The applicant must be able to provide evidence of those measures to ASX Clear (Futures) upon request at any time.

(c) In any other case, the applicant must provide a statutory declaration to ASX Clear (Futures) in relation to itself and from each of its directors confirming that:

(i) they have not been the subject of any previous bankruptcy, insolvency, receivership, administration, or similar event;

(ii) they have not been charged with or convicted of any charges or convictions for any offences relating to dishonesty, fraud, financial markets-related conduct, or money laundering;

(iii) they have not been the subject of any fines, civil penalties, banning, suspension or other disciplinary measures for financial markets-related conduct;

(iv) they have not been the subject of any disciplinary action or adverse mention in a report made by, or at the request of, any government or governmental authority or agency, the Commission, ASX, an Approved Clearing Facility, an Approved Settlement Facility, and any other exchange, market operator or clearing and/or settlement facility;

(v) they have not been refused membership of any financial markets-related, legal or accounting professional organisation or had such a membership revoked; and

(vi) they have not had an application for Participant status (or equivalent status) on another exchange, market, Approved Clearing Facility or Approved Settlement Facility refused,

whether in Australia or elsewhere, or, if that is not the case, a statement to that effect and a detailed explanation of the circumstances involved.

The applicant must also consent to ASX Clear (Futures) obtaining information on the creditworthiness of the applicant.

Purpose of amendment:

ASX is proposing to align its business integrity admission requirements across the ASX and ASX 24 markets and the clearing and settlement facilities that service those markets. This will simplify the admission process for applicants applying for admission to multiple markets and/or facilities.

Rule 4.2(e) Organisational Requirements

In order to satisfy ASX Clear (Futures) that it meets Rule 4.2(e), an applicant must provide to ASX Clear (Futures) a certification in the form prescribed by ASX Clear (Futures) from time to time that the applicant has the resources and processes in place to comply with its obligations under the Rules.

For these purposes, “resources” include financial, technological and human resources and “processes” include management, supervision, training, business continuity and disaster recovery processes.

In providing this certification to ASX Clear (Futures), the applicant must have regard to:

- the Rules;
- ASX Clear (Futures) Operating Rules Guidance Note 1 Admission as a Participant;
- ASX Clear (Futures) Operating Rules Guidance Note 9 Offshoring and Outsourcing;
- ASX Clear (Futures) Operating Rules Guidance Note 10 Business Continuity and Disaster Recovery;
- ASIC Regulatory Guide 104 Licensing: Meeting the general obligations;
- ASIC Regulatory Guide 105 Licensing: Organisational competence; and
- any other matters specified in the form prescribed by ASX for these purposes.

If required by ASX Clear (Futures), the applicant must be able to demonstrate to the satisfaction of ASX Clear (Futures), at any time, the basis on which the certification is or was provided.

Purpose of amendment:

ASX is proposing to align its organisational admission requirements across the ASX and ASX 24 markets and the clearing and settlement facilities that service those markets. This will simplify the admission process for applicants applying for admission to multiple markets and/or facilities.

Rule 4.3A Applicants Incorporated or Carrying on Business Outside Australia

If an applicant is incorporated or intends to carry on any part of its business as a Clearing Participant outside Australia:

- (a) ASX Clear (Futures) may require that the applicant (or a Related Body Corporate) currently conducts clearing operations which are regulated by a foreign derivatives or securities exchange or foreign regulatory authority acceptable to ASX Clear (Futures); or
- (b) ASX Clear (Futures) may require that the applicant is:
 - (i) a clearing and settlement facility which holds an Australian CS Facility licence; or
 - (ii) operates overseas as a clearing and settlement facility in accordance with the legal requirements of that jurisdiction and ASX Clear (Futures) considers the applicant to be adequately regulated in that jurisdiction; and
- (c) ASX Clear (Futures) may require the applicant (or persons connected with the applicant) to give an additional undertaking or undertakings governed by Australian law in respect of any matter which ASX

Clear (Futures) considers reasonable or in the interest of ASX Clear (Futures) including, without limitation, undertakings as to:

- (i) the amount of resources and number of Employees to be located in Australia;
 - (ii) access by ASX Clear (Futures) to records required to be kept under these Rules;
 - (iii) foreign taxes that might be payable;
 - (iv) the law governing the applicant's activities under the Rules and the applicant's submission to jurisdiction;
 - (v) whether the law of the applicant's incorporation would recognise protections which are substantially equivalent to those afforded by Australian law to clients' money and property in a winding-up of the applicant; and
 - (vi) the ranking of creditors on a winding-up of the applicant; and
- (d) ASX Clear (Futures) may require the applicant to provide a legal opinion, from independent lawyers acceptable to ASX Clear (Futures), and paid for by the applicant, which deals with matters required by ASX Clear (Futures) and which is acceptable to ASX Clear (Futures); and
- (e) ASX Clear (Futures) may require a performance bond in the form and substance acceptable to ASX Clear (Futures); and
- (f) if the applicant proposes to conduct any Overseas Activity (as defined in Rule 4.15A), ASX Clear (Futures) may require the applicant to notify ASX Clear (Futures) of the details of the proposed Overseas Activity and to demonstrate that the proposed Overseas Activity will comply with Rule 4.15A.

Purpose of amendment:

ASX is proposing to align its admission regime for participants that are incorporated or intend to carry on business as a participant outside Australia. New Procedure 4.3A essentially aligns the admission requirements for such participants in the ASX Clear (Futures) Operating Rules with those in the ASX Clear Operating Rules.

Rule 4.14(aa) — Becoming a Clearing Participant

~~If a Clearing Participant is an AFS licensee, a copy of the FS 71 audit report is prescribed. Clearing Participants which are foreign ADIs and who are exempted by ASIC Class Order CO 03/823 from the requirement to prepare FS71 audit reports, may lodge the equivalent audit report that they lodge with ASIC. Exceptions to the above require the approval of ASX Clear (Futures). An FS71 or equivalent audit report should be forwarded to Compliance@asx.com.au.~~

Purpose of amendment:

As mentioned above, to reduce administrative burden on participants, ASX is removing the requirement in ASX Clear (Futures) Operating Rule 4.14(aa) for participants to lodge an ASIC Form FS 71 annually with ASX and to replace that with an obligation simply to notify ASX where a significant issue has been identified by the auditor in that report. Consequently, ASX is proposing to delete Procedure 4.14(aa), as it is no longer required.

Rule 4.14(a) ~~Becoming a~~ General Conduct of Clearing Participants

The prescribed form of annual audit certificate as required under Rule 4.14(a) is Form 1 and Form 2, ~~along with the director's declaration~~ as set out in the Appendix hereto. These are to be submitted via email to CRAteam@asx.com.au within 3 months of the Clearing Participant's financial year end.

Items in Form 1 or 2 marked in bold and square bracketed may need to be deleted. Items marked with an asterisk indicate a selection that needs to be made. No other changes should be made to Form 1 or 2.

Foreign Clearing Participants can choose to have their internal controls and return audited according to Australian auditing standards and code of ethics or auditing standards and code of ethics of their home jurisdiction. The appropriate selection should be made in the Form 1 and Form 2. Notwithstanding this selection, ASX Clear (Futures) reserves the right to require an auditor to provide a report based on the Australian auditing standards and ~~or~~ code of ethics.

KEY:
* — delete as applicable

Note:
*Where it may be necessary to make a deletion, the words to be deleted have been highlighted in bold and as noted above are followed by an asterisk (i.e. *).
Any other deletions, amendments or omissions other than those listed above will deem the auditor's report as incorrect or incomplete.*

...

Appendix — Director's Declaration

~~As directors of [Entity Name] ("the Participant"), we are responsible for maintaining an effective internal control structure, including establishing and maintaining effective internal controls designed to ensure compliance with the requirements of:~~

- ~~— ASX Clear (Futures) Pty Limited's ("ASX Clear (Futures)") **Operating Rule 8.1/OTC Rule 3.3(a)(ii)*** in relation to the maintenance of net tangible assets.~~

~~In carrying out this responsibility, we have had regard to the interests of the clients and owners of the Participant, and to the general effectiveness and efficiency of the operations of the Participant.~~

~~In the opinion of the directors, the Participant:~~

- ~~(a) — maintained, in all material respects, during the [period] ended [date] suitably designed and effective internal controls to comply with the requirements of ASX Clear (Futures) Pty Limited's **Operating Rule 8.1/OTC Rule 3.3(a)(ii)*** in relation to the maintenance of net tangible assets.~~

.....
Director / Authorised Signatory _____ Director / Authorised Signatory _____
Name: _____ Name: _____
Date: _____ Date: _____

Date of Board Resolution (if applicable)

INSTRUCTIONS:

~~This Director's Declaration is to be signed by two signatories (where both signatories must be either a director or an authorised signatory) or alternatively, in accordance with a resolution of the board of directors (where the date of the resolution must be specified), by a single director (or authorised signatory).~~

~~If a Participant considers it necessary to qualify this standard statement, the reasons should be explained in full in an accompanying statement.~~

~~This statement is required to be completed and lodged annually by each Participant within three months of the Participant's financial year end.~~

Purpose of amendment:

ASX is proposing to align the title of Procedure 4.14 with the title for the section of the Rules in which ASX Clear (Futures) Operating Rule 4.14 appears.

ASX is also proposing to make some minor amendments to the instructions for completing the Form 1 and Form 2 for clarity.

More significantly, ASX is proposing to remove the annual Director's Declaration currently required to accompany a Form 1 and Form 2 on the basis that the contents of the declaration are already covered in ASX Clear (Futures) Operating Rule 4.4.

Rule 4.14(e) Professional Indemnity Insurance

For the purposes of Rule 4.14(e), where the Participant acts for any person other than itself or a Related Body Corporate:

- (a) the Participant must take out and maintain, at all times, a professional indemnity (or equivalent) insurance policy that the Participant determines (acting reasonably) to be adequate, having regard to the nature and extent of the business carried on by the Participant in connection with its business as a Participant and the responsibilities and risks assumed or which may be assumed by the Participant in connection with that business and retain a copy of the certificate evidencing the insurance;
- (b) the professional indemnity (or equivalent) insurance must include insurance against a breach of duty it owes in a professional capacity, whether owed in contract or otherwise at law, arising from any act or omission of the Participant and its Employees;
- (c) in relation to any liability or potential liability of the type referred to in this Procedure 4.14(e), the Participant must immediately notify ASX Clear of any notification to its insurer of any claim, potential claim or circumstance that might give rise to a claim, that relates in any way to its activities as a Participant and must include the following details:
 - (i) any circumstance which is likely to give rise to a claim or potential claim against the Participant;
 - (ii) the receipt of a notice from any person of any intention to make a claim or potential claim against the Participant; and
 - (iii) the details of any claim, potential claim or circumstance against the Participant including the gross contingent liability, the net contingent liability, the full name of the Participant's insurer and the date the Participant notified its insurer of the claim, potential claim or circumstance;
- (d) the Participant must also advise ASX Clear (Futures) of any other matter which ASX Clear (Futures) requires in relation to any insurance policy maintained under this Procedure 4.14e; and

- (e) [if the insurance referred to in this Procedure 4.14\(e\) is provided by a Related Body Corporate, the Participant must receive confirmation from the Related Body Corporate that it is the insurer or the self-insurer covering and indemnifying the Participant against the liabilities referred to in this Procedure 4.14\(e\) and retain a copy of the confirmation.](#)

Purpose of amendment:

ASX is proposing to add new Procedure 4.14(e) to align the professional indemnity insurance requirements applicable to participants in the ASX Clear (Futures) facility with those applicable to participants in the ASX Clear facility.

...

Rule 4.15A Foreign Participants and other Participants with Overseas Activity

[For the purposes of Rule 4.15A, the requirements are as follows:](#)

- (a) [provide prior written notification to ASX Clear \(Futures\) including details of the proposed Overseas Activity;](#)
- (b) [obtain all necessary regulatory approvals from any relevant governmental agency or regulatory authority in Australia or elsewhere in respect of the Overseas Activity and provide a copy of those regulatory approvals to ASX Clear \(Futures\);](#)
- (c) [comply with the directions of ASX Clear \(Futures\) and any relevant governmental agency or regulatory authority in Australia concerning the supervision of the Overseas Activity; and](#)
- (d) [not engage in Overseas Activity of a type which would result in ASX Clear \(Futures\) becoming subject to the jurisdiction of any relevant government agency or regulatory authority outside Australia without the prior written consent of ASX Clear \(Futures\).](#)

[Note: This Procedure applies to all Participants who are incorporated and resident in Australia but locate aspects of their activities as a Participant overseas, regardless of where they are incorporated or carry on business.](#)

Purpose of amendment:

As part of standardising the admission requirements for participants in its markets and facilities, ASX is proposing to introduce a uniform regime across those markets and facilities for offshoring and outsourcing. This regime will recognise and facilitate the increasing trend for participants to offshore some of their activities to regional centres of excellence and to use specialist outsourcers for particular activities. It will also ensure that ASX has an appropriate rule framework to regulate offshored and outsourced activities across all of its markets and facilities.

The new regime for offshoring and outsourcing will be based on the existing provisions in ASX and ASX 24 Operating Rules 1002 and 6400-6402 and the related Procedures, ASX Clear Operating Rules 3.8.1 and 4.19.1 – 4.19.4 and ASX Settlement Operating Rule 4.12.2, and will be standardised across all of ASX's markets and facilities.

Proposed Procedure 4.15A is part of that regime.

Annexure J

Proposed Changes to ASX Settlement Rules

SECTION 4 PARTICIPATION IN THE SETTLEMENT FACILITY

4.2 ADMISSION OF PARTICIPANTS

...

4.2.2A Applicants incorporated or carrying on business outside Australia

If an applicant is incorporated or intends to carry on any part of its business as a Participant outside Australia, then ASX may impose additional requirements for it to be eligible for admission as a Participant, including (but not limited to) those specified in the Procedures.

Purpose of amendment:

ASX is proposing to add a new ASX Settlement Operating Rule 4.2.2A that will enable ASX to impose additional admission requirements in relation to any applicant that is incorporated or carrying on business outside Australia. This is part of the uniform regime ASX is proposing across its markets and facilities to regulate offshoring and outsourcing.

4.2.3 ASX Settlement may waive Participation Requirements

ASX Settlement may admit a person as a Participant notwithstanding that the person does not meet all the Participation Requirements.

ASX Settlement may, by notice in writing to a Participant waive any Participation Requirements on any conditions it considers appropriate. ~~If any conditions on a waiver are imposed, all of the conditions must be complied with for the waiver to be effective. ASX Settlement may withdraw a waiver at any time. If a waiver lapses in accordance with its terms or is withdrawn by ASX Settlement, the waiver ceases to be effective from that time and the Participation Requirements the subject of the waiver applies from that time. Any request by a Participant for a waiver under this Rule must be in writing.~~

~~ASX Settlement must establish and maintain a register for recording details of relief granted under this Rule 4.2.3 and must enter the following details in the register:~~

- ~~(a) — the date that the relief takes effect;~~
- ~~(b) — the person relieved from the obligation;~~
- ~~(c) — the provision to which the relief applies;~~
- ~~(d) — brief reasons for the relief; and~~
- ~~(e) — any condition that applies to the relief.~~

~~A copy of the register must be kept at the principal place of business of ASX Settlement and must be open for inspection by any person during Business Hours.~~

Purpose of amendment:

ASX is proposing to remove the provisions regarding waivers in ASX Settlement Operating Rule 4.2.3. They are not necessary. They replicate the general provisions regarding waivers in ASX Settlement Operating Rule 3.3.

4.2.3A Admission as a Participant in ASX Settlement's discretion

The decision as to whether to grant admission as a Participant is at the absolute discretion of ASX Settlement. ASX Settlement may grant or refuse admission without giving any reasons.

Purpose of amendment:

ASX is also proposing to add a new ASX Settlement Operating Rule 4.2.3A to remove any doubt that admission to the ASX Settlement facility is at the absolute discretion of ASX.

...

4.3 ADMISSION OF GENERAL SETTLEMENT PARTICIPANTS

4.3.1 Admission of General Settlement Participants

Subject to Rule 4.2.3A, ASX Settlement will admit a person as a General Settlement Participant if ASX Settlement is satisfied that the person:

...

- (vii) a corporation that is a wholly-owned subsidiary of an Australian bank and the whole business of which is providing nominee, custody and related services or margin lending services; ~~and~~

~~(e) — unless otherwise determined by ASX Settlement;~~

(c)(i) — meets the technical and performance requirements of this Section;

(d)(ii) — meets the performance bond requirements of this Section;

~~(iii) — meets the payment facility requirements of this Section;~~

~~(e)(iv)~~ — meets the business integrity requirements of this Section; ~~and~~

(f) — meets the location requirements of this Section;

(g) — meets the payment facility requirements of this Section; and

(h)(v) — meets the ~~management~~ organisational requirements of this Section.

...

Purpose of amendment:

ASX is proposing to align its admission requirements across the ASX and ASX 24 markets and the clearing and settlement facilities that service those markets. This will simplify the admission process for applicants applying for admission to multiple markets and/or facilities.

The amendments re-order some of the admission requirements for General Settlement Participants in ASX Settlement Operating Rule 4.3.1 for consistency with the admission requirements for other types of Participants and to reflect the order in which those requirements appear in Section 4.

The proposed amendments to ASX Settlement Operating Rule 4.3.1 also add a requirement for a General Settlement Participant to comply with the location requirements in Section 4. These requirements are found in ASX Settlement Operating Rule 4.12 (see below).

4.3.2 Additional requirements for applicants holding a licence

If a person that applies for admission as a Settlement Participant in accordance with Rule 4.3.1(b) is the holder of an Australian financial services licence, an Australian CS facility licence or an Australian ~~M~~markets licence, that person must:

- (a) provide ASX Settlement with a copy of its Australian financial services licence, Australian CS facility licence or Australian ~~M~~markets licence, as the case may be, including any conditions attaching to that licence; and
- (b) immediately notify ASX Settlement if there is any ~~subsequent~~ variation to its Australian financial services licence, Australian CS facility licence or Australian ~~M~~markets licence, as the case may be, including any variation to any conditions attaching to that licence, prior to its admission as a Settlement Participant.

Note: see also Rule 4.6.1(d) requiring ASX Settlement to be notified of changes to any licence or other authorisation which authorises a Settlement Participant to carry on its business as a Settlement Participant.

Purpose of amendment:

ASX is proposing to make some minor changes to ASX Settlement Operating Rule 4.3.2(b) to clarify how it will operate in conjunction with the new obligation proposed in ASX Settlement Operating Rule 4.6.1(e) below to notify ASX if there is any change to a licence or other authorisation which authorises a Settlement Participant to carry on its business as a Settlement Participant. The former obligation will operate up to the point a Settlement Participant is admitted, while the later obligation will operate after it is admitted.

...

4.4 ADMISSION OF SPECIALIST SETTLEMENT PARTICIPANTS

4.4.1 Admission of Specialist Settlement Participants

Subject to Rule 4.2.3A, ASX Settlement will admit a person as a Specialist Settlement Participant if ASX Settlement is satisfied that the person;

- (a) has applied for admission as a Participant in accordance with Rule 4.2.1;
- (b) meets the technical and performance requirements of this Section;
- (c) meets the performance bond requirements of this Section;
- (d) and its Principals meet the capacity requirements of this Section;
- (e) meets the business integrity requirements of this Section;
- (f) meets the location ~~establishment~~ requirements of this Section (subject to Rule 4.4.2); ~~and~~
- (g) meets the payment facility requirements of this Section; and
- (h) meets the organisational requirements of this Section.

Note: a person admitted as a Settlement Participant under this Rule 4.4.1 may not act as a Sponsoring Participant.

Purpose of amendment:

ASX is proposing to align its admission requirements across the ASX and ASX 24 markets and the clearing and settlement facilities that service those markets. This will simplify the admission process for applicants applying for admission to multiple markets and/or facilities.

The proposed amendments to ASX Settlement Operating Rule 4.4.1 add a requirement for a Specialist Settlement Participant to comply with the organisation requirements in Section 4. These requirements are found in ASX Settlement Operating Rule 4.18 (see below).

...

4.4A ADMISSION OF PRODUCT ISSUER SETTLEMENT PARTICIPANTS

4.4A.1 Admission of Product Issuer Settlement Participants

Subject to Rule 4.2.3A, ASX Settlement will admit a person as a Product Issuer Settlement Participant if ASX Settlement is satisfied that the person;

- (a) has applied for admission as a Participant in accordance with Rule 4.2.1;
- (b) meets the technical and performance requirements of this Section;
- (c) meets the performance bond requirements of this Section;
- (d) and its Principals meet the capacity requirements of this Section;
- (e) meets the business integrity requirements of this Section;
- (f) meets the location ~~establishment~~ requirements of this Section; ~~and~~
- (g) meets the payment facility requirements of this Section; and;
- (h) meets the organisational requirements of this Section.

Note: a person admitted as a Product Issuer Settlement Participant under this Rule 4.4A.1 may not act as a Sponsoring Participant.

Purpose of amendment:

ASX is proposing to align its admission requirements across the ASX and ASX 24 markets and the clearing and settlement facilities that service those markets. This will simplify the admission process for applicants applying for admission to multiple markets and/or facilities.

The proposed amendments to ASX Settlement Operating Rule 4.4A.1 add a requirement for a Product Issuer Settlement Participant to comply with the organisation requirements in Section 4. These requirements are found in ASX Settlement Operating Rule 4.18 (see below).

4.5 ADMISSION OF ACCOUNT PARTICIPANTS

4.5.1 Admission of Account Participants

Subject to Rule 4.2.3A, ASX Settlement will admit a person as an Account Participant if ASX Settlement is satisfied that the person:

- (a) is the holder of an Australian financial services licence which authorises the applicant to carry on its business as a Participant

- (b) has applied for admission as a Participant in accordance with Rule 4.2.1;
- (c) meets the technical and performance requirements of this Section;
- ~~(d) meets the business integrity requirements of this Section;~~
- ~~(de)~~ meets the performance bond requirements of this Section; ~~and~~
- (e) meets the business integrity requirements of this Section;
- (f) meets the location requirements of this Section; and
- ~~(gf)~~ meets the organisational ~~management~~ requirements of this Section.

Purpose of amendment:

ASX is proposing to align its admission requirements across the ASX and ASX 24 markets and the clearing and settlement facilities that service those markets. This will simplify the admission process for applicants applying for admission to multiple markets and/or facilities.

The amendments re-order some of the admission requirements for Account Participants in ASX Settlement Operating Rule 4.5.1 for consistency with the admission requirements for other types of Participants and to reflect the order in which those requirements appear in Section 4.

The proposed amendments to ASX Settlement Operating Rule 4.5.1 also add a requirement for an Account Participant to comply with the location requirements in Section 4. These requirements are found in ASX Settlement Operating Rule 4.12 (see below).

...

4.6 NOTIFICATIONS ~~OF CHANGE OF DETAILS~~ REQUIREMENTS

4.6.1 ~~Change of name or address~~ Notification of change of details

A Participant must notify ASX Settlement in writing if:

- (a) the Participant changes its name, or the name under which the Participant carries on business as a Participant; or
- (b) the Participant changes any address at which the Participant carries on business as a Participant; ~~or~~
- ~~(c) the Participant effects any change of Third Party Provider in connection with its activities as a Participant;~~

before the change becomes effective, and immediately if:

- (c) there is any material change in information concerning its business as a Participant from that previously provided to ASX Settlement; or
- (d) there is any change to a licence or other authorisation which authorises the Settlement Participant to carry on its business as a Settlement Participant.

The notice must include full details of the change.

~~Note: Participants should also refer to Rule 12.18.1 for self reporting requirements.~~

4.6.2 Participant to submit details of authorised signatories

- (a) A Participant must:

- (i) submit to ASX Settlement, in the manner and form prescribed by ASX Settlement from time to time, details of persons who are authorised by the Participant to sign documentation and to deal with settlement issues in connection with the operation of its business as a Participant; and
- (ii) promptly notify ASX Settlement in writing if any of the persons whose names are submitted under this Rule 4.6.2 cease to be authorised by the Participant to sign the relevant documentation or to deal with settlement issues or if any new person is given that authority.
- (b) ASX Settlement is entitled to rely on the list referred to in Rule 4.6.2(a)(i) as updated from time to time under Rule 4.6.2(a)(ii) as evidence that the persons whose names are on the list at any given time are authorised to sign on behalf of the Participant documentation presented to ASX Settlement or to deal with issues in connection with the operation of its business as a Participant.
- (c) Nothing in this Rule 4.6.2 limits the persons whom ASX is entitled to assume are authorised by the Participant to sign documentation and to deal with settlement issues in connection with the operation of its business as a Participant or the operation of Rule 6.2.1.

Purpose of amendment:

For consistency with the notification obligations in other ASX rule books, ASX is also proposing to introduce new notification obligations in ASX Settlement Operating Rule 4.6.1 for a Settlement Participant to notify ASX in writing of any material change in information concerning its business as a Participant from that previously provided to ASX Settlement and any change to a licence or other authorisation which authorises the Settlement Participant to carry on its business as a Settlement Participant.

This will subsume and replace the current obligation in ASX Settlement Operating Rule 4.6.1(c) to notify ASX of any change of Third party Provider.

ASX is also proposing to add a new Rule 4.6.2 (equivalent to the provisions in Rules 6510 to 6513 of the ASX and ASX 24 Operating Rules and Rule 4.12.1 of the ASX Clear Operating Rules) dealing with authorised signatories.

...

4.11 BUSINESS INTEGRITY REQUIREMENTS

4.11.1 Business integrity requirements

For an applicant to be eligible for admission as a Participant, the applicant must ~~satisfy ASX Settlement that it is~~ be of high business integrity. Without limiting the discretion of ASX Settlement, in assessing whether the applicant is of high business integrity, ASX Settlement may have regard to the matters set out in the Procedures.

Purpose of amendment:

ASX is proposing to align its business integrity admission requirements across the ASX and ASX 24 markets and the clearing and settlement facilities that service those markets. This will simplify the admission process for applicants applying for admission to multiple markets and/or facilities.

4.12 ~~LOCATION~~ ESTABLISHMENT REQUIREMENTS

4.12.1 Location requirements ~~Entities other than Foreign Clearing House~~

The location requirements of this Section are that a Participant that proposes to locate or relocate any part of its business as a Participant (including, without limitation, any means of communicating CHES Messages to ASX), or to locate or relocate any Employees, outside Australia (the "Overseas Activity") must comply with the requirements set out in the Procedures. ~~A person other than a Participant which is a Foreign Clearing House must meet the local establishment requirements of this Section. The local establishment requirements for a Participant other than a Foreign Clearing House are:~~

- ~~(a) if the body is a body corporate, it is incorporated or registered as a foreign company under the Corporations Act; and~~
- ~~(b) for any person, that the person carries on business in Australia.~~

4.12.2 Overseas Duties and Taxes

If a Participant is incorporated outside Australia or conducts part of its business as a Participant outside Australia and:

- (a) any tax or duty of any kind would be liable to be paid by ASX Settlement, a Related Body Corporate of ASX Settlement or any other person bound by these Rules (each an "Entity");
- (b) the Participant would be required by any law or regulation to withhold payment of an amount or deduct a tax or duty of any kind from an amount payable by it to any Entity; or
- (c) an Entity or Entities are required by any law or regulation to withhold payment of an amount or deduct a tax or duty of any kind from an amount payable by the Entity or Entities,

in respect of any transaction or agreement between that Participant and any Entity or Entities, and that duty or tax would not be liable to be paid or would not be required to be withheld or deducted if the Participant were incorporated in Australia and conducting its business as a Participant wholly in Australia, then the Participant must disclose to each relevant Entity that the duty or tax may be payable, or withholding or deduction may have to be made, before the relevant transaction or agreement to which the duty or tax relates is entered into or instructions are accepted. The disclosure must be in writing and include the nature of the duty, tax or withholding and the amount of the likely duty, tax or withholding or the appropriate rate of duty or tax.

4.12.3 Indemnity

Without limiting any other indemnity given by a Participant under these Rules, each Participant indemnifies ASX Settlement in respect of any loss or damage caused to ASX Settlement as a result of a failure by that Participant to observe the requirements of Rules 4.12.1 – 4.12.3.

4.12.4 Communication requirements

A Participant must ensure, even if part of its business as a Participant or some of its Employees are located outside Australia, that it has in place appropriate arrangements so that the Participant and ASX Settlement (and Related Bodies Corporate of ASX Settlement) can communicate with each other and receive each other's responses quickly on a day-to-day operational basis and so that the Participant can promptly comply with the Rules or a request of ASX Settlement (or a Related Body Corporate of ASX Settlement).

4.12.52 Agent for service of process ~~Foreign Clearing House~~

A Participant that is not incorporated or registered as a foreign company under the Corporations Act ~~which is a Foreign Clearing House~~ must:

- (a) appoint an agent, as approved by ASX Settlement, which is resident in Australia for service of process in Australia;

- (b) provide ASX Settlement as soon as practicable with a copy of any agent's acceptance of such appointment;
- (c) inform ASX Settlement of the intended effective date of any agent ceasing for any reason to act as agent for the ~~Participant Foreign Clearing House~~; and
- (d) if paragraph (c) applies, appoint as soon as practicable, and in any case before an outgoing agent ceases acting as agent for the ~~Participant Foreign Clearing House~~, a new agent, as approved by ASX Settlement.

Purpose of amendment:

As part of standardising the admission requirements for participants in its markets and facilities, ASX is proposing to introduce a uniform regime across those markets and facilities for offshoring and outsourcing. This regime will recognise and facilitate the increasing trend for participants to offshore some of their activities to regional centres of excellence and to use specialist outsourcers for particular activities. It will also ensure that ASX has an appropriate rule framework to regulate offshored and outsourced activities across all of its markets and facilities.

The new regime for offshoring and outsourcing will be based on the existing provisions in ASX and ASX 24 Operating Rules 1002 and 6400-6402 and the related Procedures, ASX Clear Operating Rules 3.8.1 and 4.19.1 – 4.19.4 and ASX Settlement Operating Rule 4.12.2, and will be standardised across all of ASX's markets and facilities.

The changes proposed ASX Settlement Operating Rule 4.12 are part of that regime.

The proposed amendments will remove the requirement in ASX Settlement Operating Rule 4.12.1 that an ASX Settlement participant which is not a foreign clearing house must either be incorporated in Australia or registered as a foreign company in Australia. They also remove the prospect of a natural person who carries on business in Australia being admitted as an ASX Settlement participant.

The requirement to appoint an agent for service of process in former ASX Settlement Operating Rule 4.12.2 (which will become ASX Settlement Operating Rule 4.12.5 with the proposed amendments) – which previously applied only to Foreign Clearing Houses – is proposed to be extended to apply to any ASX Settlement participant that is not incorporated or registered as a foreign company in Australia.

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4.18 ~~MANAGEMENT~~ ORGANISATIONAL REQUIREMENTS

4.18.1 Organisational requirements ~~Management Structure and Supervisory Procedures~~

The ~~management-organisational~~ requirements of this Section are that an ~~Account Participant and a General Settlement~~ Participant must have adequate resources and processes to comply with its obligations as a Participant under these Rules.:

- ~~(a) have an appropriate management structure in place, including operations and processes which are reasonably designed, implemented and function so as to achieve compliance by the Participant with these Rules;~~
- ~~(b) keep accurate records of its management structure and give a copy of the management structure to ASX Settlement; and~~
- ~~(c) have appropriate supervisory policies and procedures, and meet any standards prescribed by ASX Settlement, to ensure compliance by the Participant with these Rules.~~

For these purposes, "resources" include financial, technological and human resources and "processes" include management, supervision, training, business continuity and disaster recovery processes.

Purpose of amendment:

ASX is proposing to align its organisational admission requirements across the ASX and ASX 24 markets and the clearing and settlement facilities that service those markets. This will simplify the admission process for applicants applying for admission to multiple markets and/or facilities.

SECTION 6 RIGHTS AND OBLIGATIONS OF PARTICIPANTS

6.2 PARTICIPANT RESPONSIBILITY FOR INDIVIDUALS INVOLVED IN ITS BUSINESS ~~EMPLOYEES, THIRD PARTY PROVIDERS~~ AND ACCURACY OF INFORMATION

6.2.1 Responsibility for individuals involved in business

A Participant is responsible for all actions and omissions of persons involved in its business as a Participant ~~in connection with that business~~ including, without limitation, its ~~e~~Employees, ~~officers and agents~~.

Purpose of amendment:

ASX is proposing to make some minor amendments to ASX Settlement Operating Rule 6.2.1 for consistency with other rulebooks.

~~6.2.2~~ ~~Third Party providers~~

~~If a Participant employs or retains any Third Party Provider to perform its obligations or take any action under these Rules, the Participant must ensure that the obligations are performed, or the actions are taken, in accordance with these Rules.~~

Purpose of amendment:

ASX is proposing to delete ASX Settlement Operating Rule 6.2.2 as it is now covered by ASX Settlement Operating Rule 6.2.1.

6.2.2~~3~~ Information given by Participant

A Participant must ensure that all information which the Participant gives to ASX Settlement is complete, accurate and not misleading. If a Participant becomes aware that information which it, has given previously to ASX Settlement was or has become incomplete, inaccurate or misleading, the Participant must ~~within 5 Business Days or becoming aware of that fact~~ promptly notify ASX Settlement in writing.

Purpose of amendment:

ASX is proposing to renumber ASX Settlement Operating Rule 6.2.3 as Rule 6.2.2 and amend the notification timeframe in it to be consistent with the timeframe for similar notifications under other ASX rulebooks.

16. COMMUNICATIONS WITH ASX SETTLEMENT

16.1 FACILITY USER OBLIGATIONS

16.1.1 Obligations in relation to CHES interface

Each Facility User must:

- (a) establish and maintain an interface with CHES in accordance with the EIS;
- (b) ensure that no person other than an Authorised Person has access to that interface with CHES;
- (c) ~~provide promptly give~~ Notice to ASX Settlement as soon as practicable if it is aware of any fact or matter or intends to take any action that will or may affect its capacity to communicate reliably with CHES in accordance with the EIS, including (without limitation):
 - (i) any change to its interface with CHES;
 - (ii) a change in any Third Party Provider; or
 - (iii) any changes to that Facility User's interface with CHES or computing environment, including any change that may be made by a Third Party Provider that alters or may alter its capacity, or the Third Party Provider's capacity, to communicate with CHES; and
- (d) observe and give effect to any advice or directions given by ASX Settlement under Rule 16.3.

Purpose of amendment:

ASX is proposing to make a minor amendment to ASX Settlement Operating Rule 16.1.1 for consistency with the notification requirement in other rulebooks.

Annexure K

Proposed Changes to ASX Settlement Procedures

SECTION 4 PARTICIPATION IN THE SETTLEMENT FACILITY

PROCEDURE 4.2.2A APPLICANTS INCORPORATED OR CARRYING ON BUSINESS OUTSIDE AUSTRALIA

If an applicant is incorporated or intends to carry on any part of its business as a Participant outside Australia:

- (a) ASX Settlement may require that the applicant (or a Related Body Corporate) currently conducts clearing operations which are regulated by a foreign clearing and settlement facility, a foreign financial market or a foreign regulatory authority acceptable to ASX Settlement; or
- (b) ASX Settlement may require that the applicant is:
 - (i) a clearing and settlement facility which holds an Australian CS Facility licence; or
 - (ii) operates overseas as a clearing and settlement facility in accordance with the legal requirements of that jurisdiction and ASX Settlement considers the applicant to be adequately regulated in that jurisdiction; and
- (c) ASX Settlement may require the applicant (or persons connected with the applicant) to give an additional undertaking or undertakings governed by Australian law in respect of any matter which ASX Settlement considers reasonable or in the interest of the public or ASX Settlement including, without limitation, undertakings as to:
 - (i) the amount of resources and number of Employees to be located in Australia;
 - (ii) access by ASX Settlement to records required to be kept under these Rules;
 - (iii) foreign taxes that might be payable;
 - (iv) the law governing the applicant's activities under the Rules and the applicant's submission to jurisdiction;
 - (v) whether the law of the applicant's incorporation would recognise protections which are substantially equivalent to those afforded by Australian law to clients' money and property in a winding-up of the applicant; and
 - (vi) the ranking of creditors on a winding-up of the applicant; and
- (d) ASX Settlement may require the applicant to provide a legal opinion, from independent lawyers acceptable to ASX Settlement, and paid for by the applicant, which deals with matters required by ASX Settlement and which is acceptable to ASX Settlement; and
- (e) ASX Settlement may require a performance bond in the form and substance acceptable to ASX Settlement; and
- (f) if the applicant proposes to conduct any Overseas Activity (as defined in Rule 4.12.1), ASX Settlement may require the applicant to notify ASX Settlement of the details of the proposed Overseas Activity and to demonstrate that the proposed Overseas Activity will comply with Procedure 4.12.1.

Purpose of amendment:

ASX is proposing to align its admission regime for participants that are incorporated or intend to carry on business as a participant outside Australia. New Procedure 4.2.2A essentially aligns the admission requirements for such participants in the ASX Settlement Operating Rules with those in the ASX Clear Operating Rules.

PROCEDURE 4.11.1 BUSINESS INTEGRITY REQUIREMENTS

In order to demonstrate to ASX Settlement that it ~~is of high business integrity~~ meets Rule 4.11.1, an applicant must satisfy one of the following ~~requirements~~:

- (a) If the applicant is an authorised deposit-taking institution which has been granted authority to carry on a banking business in Australia under the Banking Act 1959, ~~that~~ the applicant must confirm to ASX Settlement that it has in place a 'fit and proper' policy that meets the requirements of the Australian Prudential Regulation Authority Prudential Standard CPS 520 ~~and can provide evidence of that policy;~~
The applicant must be able to provide evidence of that policy to ASX Settlement upon request at any time.
- (b) If the applicant holds an Australian financial services licence which authorises it to carry on business as a Participant, ~~that~~ the applicant must confirm to ASX Settlement that it has in place measures to ensure its responsible managers are of good fame and character, as required in ~~the~~ ASIC Regulatory Guide ~~2.150~~ 105.33 and 2.162, which are also applied to any of its directors who are not responsible managers ~~and can provide evidence of those measures; or~~
The applicant must be able to provide evidence of those measures to ASX Settlement upon request at any time.
- (c) In any other case, the applicant must provide ~~the following information~~ a statutory declaration to ASX Settlement in relation to itself and from each of its directors confirming that ~~(with respect to Australia and all other foreign jurisdictions):~~
- (i) they have not been the subject of any previous bankruptcy, insolvency, receivership, administration, or similar event;
 - (ii) they have not been charged with or convicted of any charges or convictions for any offences relating to dishonesty, fraud, financial markets-related conduct, or money laundering;
 - (iii) they have not been the subject of any fines, civil penalties, banning, suspension or other disciplinary measures for financial markets-related conduct;
 - (iv) they have not been the subject of any disciplinary action or adverse mention in a report made by, or at the request of, any government or governmental authority or agency, the Commission, ASX, an Approved Clearing Facility, an Approved Settlement Facility, and any other exchange, market operator or clearing and/or settlement facility;
 - (v) they have not been refused ~~any refusal of membership or revocation of membership of~~ any financial markets-related, legal or accounting professional organisation or had such a membership revoked ~~body; and~~
 - (vi) they have not had ~~any refusal of~~ an application for Participant status (or equivalent status) on another exchange, market ~~operator~~, Approved Clearing Facility or Approved Settlement Facility refused ~~(with consent provided by the applicant for ASX to obtain details from the relevant exchange, market operator, Approved Clearing Facility or Approved Settlement Facility); and~~
whether in Australia or elsewhere, or, if that is not the case, a statement to that effect and a detailed explanation of the circumstances involved.
- ~~(vii) —~~ The applicant must also consent to ~~for~~ ASX Settlement ~~to obtain~~ ing information on the creditworthiness of the applicant ,
~~and that information must be acceptable to ASX.~~

Purpose of amendment:

ASX is proposing to align its business integrity admission requirements across the ASX and ASX 24 markets and the clearing and settlement facilities that service those markets. This will simplify the admission process for applicants applying for admission to multiple markets and/or facilities.

~~PROCEDURE 4.12.1 LOCAL ESTABLISHMENT REQUIREMENTS~~ ~~— [Deleted]~~

PROCEDURE 4.12.1 OVERSEAS ACTIVITY

For the purposes of Rule 4.12.1, the requirements are as follows:

- (a) provide prior written notification to ASX Settlement including details of the proposed Overseas Activity;
- (b) obtain all necessary regulatory approvals from any relevant governmental agency or regulatory authority in Australia or elsewhere in respect of the Overseas Activity and provide a copy of those regulatory approvals to ASX Settlement;
- (c) comply with the directions of ASX Settlement and any relevant governmental agency or regulatory authority in Australia concerning the supervision of the Overseas Activity; and
- (d) not engage in Overseas Activity of a type which would result in ASX Settlement becoming subject to the jurisdiction of any relevant government agency or regulatory authority outside Australia without the prior written consent of ASX Settlement.

Note: This Procedure applies to all Participants who are incorporated and resident in Australia but locate aspects of their activities as a Participant overseas, regardless of where they are incorporated or carry on business.

Purpose of amendment:

As part of standardising the admission requirements for participants in its markets and facilities, ASX is proposing to introduce a uniform regime across those markets and facilities for offshoring and outsourcing. This regime will recognise and facilitate the increasing trend for participants to offshore some of their activities to regional centres of excellence and to use specialist outsourcers for particular activities. It will also ensure that ASX has an appropriate rule framework to regulate offshored and outsourced activities across all of its markets and facilities.

The new regime for offshoring and outsourcing will be based on the existing provisions in ASX and ASX 24 Operating Rules 1002 and 6400-6402 and the related Procedures, ASX Clear Operating Rules 3.8.1 and 4.19.1 – 4.19.4 and ASX Settlement Operating Rule 4.12.2, and will be standardised across all of ASX's markets and facilities.

Proposed Procedure 4.12.1 is part of that regime.

...

PROCEDURE 4.18.1 APPLICANT TO MEET MANAGEMENT REQUIREMENTS ORGANISATIONAL REQUIREMENTS

~~ASX Settlement prescribes the following standards for the purpose of the Rule:~~

- ~~.a) Australian Standard on Compliance (AS 3806:2006);~~
- ~~b) Australian / NZ ISO Risk Management Principles and guidelines (AS/NZS ISO 31000:2009);~~
- ~~c) Australian / NZS Business Continuity Managing disruption related risk (AS/NZS 5050:2010);~~

~~d) Australian Standard on Customer Satisfaction (AS ISO 10002-2006); and~~

~~e) ASIC Regulatory Guide 104 and ASIC Regulatory Guide 105.~~

In order to satisfy ASX Settlement that it meets Rule 4.18.1, an applicant must provide to ASX Settlement a certification in the form prescribed by ASX Settlement from time to time that the applicant has the resources and processes in place to comply with its obligations under the Rules.

For these purposes, “resources” include financial, technological and human resources and “processes” include management, supervision, training, business continuity and disaster recovery processes.

In providing this certification to ASX Settlement the applicant must have regard to:

- the Rules;
- ASX Settlement Operating Rules Guidance Note 1 Admission as a Participant;
- ASX Settlement Operating Rules Guidance Note 9 Offshoring and Outsourcing;
- ASX Settlement Operating Rules Guidance Note 10 Business Continuity and Disaster Recovery;
- ASIC Regulatory Guide 104 Licensing: Meeting the general obligations;
- ASIC Regulatory Guide 105 Licensing: Organisational competence; and
- any other matters specified in the form prescribed by ASX Settlement for these purposes.

If required by ASX Settlement, the applicant must be able to demonstrate to the satisfaction of ASX Settlement, at any time, the basis on which the certification is or was provided.

Purpose of amendment:

ASX is proposing to align its organisational admission requirements across the ASX and ASX 24 markets and the clearing and settlement facilities that service those markets. This will simplify the admission process for applicants applying for admission to multiple markets and/or facilities.

Annexure L

Proposed Changes to ASX Enforcement and Appeals Rules

1.12 DEFINITIONS

1.12.1 Definitions

“Relevant Person” means any (as the context requires) of the following:

- (a) a Market Participant, Warrant-Issuer or AQUA Product Issuer as defined in the ASX Operating Rules;
- (b) ~~a Regulated Person~~ or an Affiliate Based CP as defined in the ASX Clear Operating Rules or a person applying to ASX Clear for admission as a Participant pursuant to Rule 3.1 of the ASX Clear Operating Rules;...

3.1.3 ASX Clear Operating Rule Appeals

...

- ~~(db) A Regulated Person (other than a Participant) if dissatisfied with a decision of ASX Clear under ASX Clear Operating Rule 19.6.2 to suspend or terminate the recognition of the Regulated Person;~~

...

Purpose of amendment:

As mentioned previously, ASX is proposing to remove the ‘responsible executive’ requirements from the ASX Clear Operating Rules. This requires a consequential change to the definition of “Relevant Person” in Rule 1.12.1 of the ASX Enforcement and Appeals Rulebook (being the list of persons amenable to disciplinary action by ASX) and also to the list of persons in Rule 3.1.3 of that Rulebook who can appeal a disciplinary decision under the ASX Clear Operating Rules.

3.1.6 ASX Clear (Futures) Operating Rule Appeals

- (a) A Relevant Person if dissatisfied with a determination of ASX Clear (Futures) under Section 2 of this Rulebook to issue an Enforcement Notice or any sanction imposed in the Enforcement Notice; ~~and~~
- (b) An applicant or Participant (as applicable) if dissatisfied with a decision of ASX Clear (Futures) to impose a condition under Rule 4.5; and
- (cb) An applicant if dissatisfied with the decision to not grant Participant status.

Purpose of amendment:

As mentioned previously, ASX is proposing to introduce a new ASX Clear (Futures) Operating Rule 4.5 which will remove any doubt that ASX Clear (Futures) can impose conditions on the admission of a Clearing Participant to that facility, both at the time of admission and thereafter.

In light of the introduction of that new rule, ASX is also proposing to amend Rule 3.1.6 of the ASX Enforcement and Appeals Rulebook to include a right of appeal to the ASX Appeals Tribunal where ASX imposes a condition on the admission of an ASX Clear (Futures) Clearing Participant to which the Clearing Participant objects.

Annexure M

Proposed Changes to ASX Enforcement and Appeals Procedures

PROCEDURE 3.1 DECISIONS THAT MAY BE APPEALED

...

| 3.1.6 ASX Clear (Futures) Operating Rule Appeals | | | |
|--|--------------------------------|---|--------------------------------------|
| Rule 3.1.6(a) | Written notice | No later than 20 Business Days from receipt of the Enforcement Notice | \$5000 GST exclusive |
| Rule 3.1.6(b) | Written notice | No later than 10 Business Days from receipt of the reasons for determination. | \$5000 GST exclusive |
| Rule 3.1.6(cb) | Written notice | No later than 10 Business Days from receipt of the reasons for determination. | \$5000 GST exclusive |

Purpose of amendment:

As mentioned previously, ASX is proposing to introduce a new ASX Clear (Futures) Operating Rule 4.5 which will remove any doubt that ASX Clear (Futures) can impose conditions on the admission of a Clearing Participant to that facility, both at the time of admission and thereafter.

In light of the introduction of that new rule, ASX is also proposing to amend Rule 3.1.6 of the ASX Enforcement and Appeals Rulebook to include a right of appeal to the ASX Appeals Tribunal where ASX imposes a condition on the admission of an ASX Clear (Futures) Clearing Participant to which the Clearing Participant objects. The amendment proposed above to Procedure 3.1 sets out the method, timeframe and appeal fee for initiating such an appeal.