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CONTENTS

Response to Consultation Feedback on amendments to the Operating Rules of ASX Clear and ASX Clear (Futures) for recognition in the European Union.....	3
Response to Consultation Feedback.....	3
Revised Operating Rules package	3
Revised Australian Law Legal Opinions	4
Next steps	4
Annexure 1: Questions/comments and ASX response on proposed enhancements to ASX Client Clearing Service	5

Response to Consultation Feedback on amendments to the Operating Rules of ASX Clear and ASX Clear (Futures) for recognition in the European Union

Response to Consultation Feedback

On 15 December 2014, ASX released a [Consultation Paper](#) seeking comment on proposed amendments to the Operating Rules of the ASX Group central counterparties, ASX Clear and ASX Clear (Futures) (**ASX CCPs**), which will enable excess customer collateral for derivatives to be held directly with the ASX CCPs. ASX is introducing the enhancements to comply with regulatory guidance of the Reserve Bank of Australia (**RBA**), and so that the ASX CCPs can gain recognition in the European Union (**EU**). This document presents the results of that public consultation.

ASX received 1 formal submission in response to the Consultation Paper. The response was confidential. ASX also held a number of bilateral discussions with Clearing Participants and clients.

In the course of the consultation, ASX received a number of questions and comments relating to the proposed enhancements for ASX Clear (Futures) and the ASX Client Clearing Service. These questions and comments and ASX's responses are summarised in Annexure 1. ASX received no questions or comments relating to the proposed enhancements for ASX Clear.

Revised Operating Rules package

ASX has made several minor amendments to the ASX Clear (Futures) Operating Rules and Procedures to clarify that:

- a client does not have proprietary rights in the assets attributed to its Individual Client Account (refer FR112.1(j));
- ASX's undertaking to port or return "equivalent assets" to those attributed to an Individual Client Account refers to securities, cash or other assets (as applicable) which are of an identical type, nominal value, description and amount to the specific assets attributed to the Individual Client Account (refer FR112.1(j)(ii), FR121.4); and
- ASX may amend the record of attribution of an Individual Client Account to reflect any amendments in the nature or characteristics of the cash or non-cash assets attributed to that account following a corporate action, takeover or similar event with respect to such assets (FR116.2A).

ASX has amended the ASX Clear Operating Rules to clarify that ASX will return excess cash upon a Clearing Participant's request unless the excess cash is required to cover the Participant's obligations to ASX Clear (refer ASX Clear Rule 14.6.6).

An extract of the ASX Clear (Futures) Operating Rules and Procedures and ASX Clear Operating Rules marking up these minor amendments is available [here](#).

A consolidation of ASX's proposed amendments to the ASX Clear Operating Rules and ASX Clear (Futures) Operating Rules outlined in the December 2014 Consultation Paper and this Response to Consultation are available at:

- [ASX Clear Operating Rules](#) and [ASX Clear Operating Rules – Procedures](#)
- [ASX Clear \(Futures\) Operating Rules](#) and [ASX Clear \(Futures\) Operating Rules - Procedures](#)

Revised Australian Law Legal Opinions

As a consequence of the enhancements to the Individual Client Account structure offered by ASX Clear (Futures), ASX has commissioned an update to the external Australian law legal opinions prepared for the ASX Client Clearing Service. ASX will make these updated legal opinions available to Clearing Participants and clients (as applicable).

Next steps

ASX will formally lodge the amended Operating Rules for ASX Clear and ASX Clear (Futures) with ASIC for regulatory clearance. Subject to regulatory clearance, the amended rules and procedures for the ASX CCPs are expected to take effect in mid-2015. ASX will publish a market notice to confirm the effective date closer to the time.

Annexure 1: Questions/comments and ASX response on proposed enhancements to ASX Client Clearing Service

	Question/Comment	ASX response
<p>ASX dealings with attributed assets on Clearing Participant default</p>	<p>If a Clearing Participant defaults and a client of the Clearing Participant has an ICA to which assets have been attributed, what will ASX port to an Alternate Clearing Participant or return to the client?</p>	<p>ASX Clear (Futures) will port (with open positions) to an Alternate Clearing Participant or remit to the client the Collateral Value of the ICA. The Collateral Value of the ICA will be the greater of:</p> <ul style="list-style-type: none"> the ASX-haircut value of all cash and non-cash assets (if any) attributed by ASX Clear (Futures) to the ICA as at the time at which the Clearing Participant defaults; and the value of Initial Margin calculated by ASX in respect of an ICA as at the last end-of-day time at which the Clearing Participant settled its Initial Margin obligations (refer to Futures Rules 116.3 and 121.3). <p>If the ICA cannot be ported, ASX Clear (Futures) will remit to the client the Collateral Value less any close-out costs attributable to that ICA.</p> <p>If cash or non-cash assets are attributed to an ICA, ASX Clear (Futures) will discharge its obligation to port or remit the Collateral Value by transferring or remitting equivalent assets to those attributed to the ICA (together with cash, if the ASX-haircut value of attributed assets is less than the value of Initial Margin), subject to the realisation of some or all of those assets in prescribed circumstances (refer to Futures Rule 121.4).</p>
<p>ASX dealings with attributed assets on Clearing Participant default</p>	<p>Given that an ICA client's attributed assets will be held in the Clearing Participant's commingled Client Clearing Account, will ASX be in a position to port or return those assets to the client if the client's Clearing Participant becomes insolvent?</p>	<p>Although client assets will continue to be commingled in a Clearing Participant's Client Clearing Account, ASX Clear (Futures) will attribute cash and non-cash assets lodged by the Clearing Participant as collateral in respect of its Client Clearing Account to an ICA in accordance with the Clearing Participant's instructions: FR 116.2A. The records maintained by ASX Clear (Futures) for this purpose are conclusive: FR 116A. Accordingly, ASX Clear (Futures) will be able to identify those assets to be ported to an Alternate Clearing Participant or returned (less close-out costs) to the client in respect of an ICA.</p> <p>In the event of a Clearing Participant's insolvency, the <i>Payment Systems and Netting Act</i> (Cth) (1998) (PSNA) will protect dealings of ASX Clear (Futures) with respect to client positions and collateral where such dealings are in accordance with the Operating Rules. Dealings under the Operating Rules include porting, close-out and remittance of property directly to the client. The protection of the</p>

Question/Comment		ASX response
		<p>PSNA applies despite any other laws.</p> <p>ASX has commissioned an update to the 2014 external Australian law legal opinion it obtained on porting that confirms that in the event of a Clearing Participant default, the CCP's actions to port or close-out and return assets under Part 10 of the ASX Clear (Futures) Operating Rules would be validated under the PSNA. That updated opinion will be made available to Clearing Participants and Clients.</p>
Collateral Transformation	How will collateral transformation work in the context of the asset attribution enhancements?	<p>ASX Clear (Futures) will only attribute to an ICA those assets that it is instructed by the client's Clearing Participant to attribute to the client's ICA. ASX Clear (Futures) will not "look behind" the Clearing Participant's instructions. However, clients who wish to take advantage of the asset attribution service feature are likely to expect their Clearing Participant to pass on particular assets to ASX Clear (Futures), rather than transforming those assets. This is a matter to be determined between the client and Clearing Participant. Clients will have ASX reporting visibility of assets attributed by ASX Clear (Futures) to their ICA.</p>
Collateral bankruptcy remote from CCP	To facilitate ASX holding collateral in a manner that is bankruptcy remote from ASX, ASX should consider making a determination under Part 11 of the ASX Clear (Futures) Operating Rules to provide Clearing Participants with the option of lodging cash and non-cash collateral (including excess) by way of a security interest arrangement.	<p>ASX does not intend to change its collateral holding arrangements as part of this package of enhancements, but will continue to monitor developments and market demand for new collateral arrangements.</p> <p>Part 11 may not be a complete solution to the objective of "bankruptcy remoteness", since under ASX's current model (all collateral received via a Clearing Participant), Part 11 would achieve bankruptcy remoteness for the Clearing Participant but not the client. Bankruptcy remoteness therefore requires broader consideration of lodgement mechanisms (e.g. direct lodgement, with or without a custodian). ASX welcomes further and more detailed input from Clearing Participants and clients on preferred lodgement mechanisms. Information about bankruptcy remote collateral arrangements favoured by Clearing Participants and clients at other CCPs are particularly welcomed.</p>

	Question/Comment	ASX response
CPM Client Fact Sheet	Will the CPM Client Fact Sheet be updated and will there be an obligation to provide the revised CPM Client Fact Sheet to existing clients?	The CPM Client Fact Sheet (comparing omnibus and ICA account types) will be updated to reflect this package of enhancements. The revised CPM Client Fact Sheet is not expected to be published until the end of June 2015 when the enhancements are operationalised. Clearing Participants will need to provide the revised CPM Client Fact Sheet to new clients (i.e. clearing clients who are on boarded after the publication date) or direct new clients to a copy of the revised CPM Client Fact Sheet. There will be no obligation on Clearing Participants to provide existing clients with the revised CPM Client Fact Sheet, however, Clearing Participants may voluntarily send the document to existing clients.
Close out costs and losses	Will clients for whom ASX Clear (Futures) is holding excess collateral be worse off if they are closed out when costs and losses are allocated?	No. The process for cost and loss allocation on close-out remains the same and does not discriminate between ICA clients for whom ASX Clear (Futures) holds excess collateral, and other clients. However, if ASX Clear (Futures) holds excess collateral for a client, and the costs and losses of close-out for that ICA are greater than the initial margin requirement of that ICA then the client's excess collateral may be applied to satisfy those costs and losses.
Individual Client Accounts and RBC positions and collateral	Will the enhancements to ASX's client clearing model allow principal positions of a Clearing Participant's related body corporate (RBC) to be segregated in an Individual Client Account (ICA) and any cash collateral to be legally segregated from the Clearing Participant? Facilitating this would assist in calculating risk weighted assets under Article 305(2)(a) of the EU Capital Requirements Regulation.	<p>ASX's previous review of market practice indicated that RBC principal positions are generally treated as House positions (and supported by House collateral). This reflects the ASIC/ASX 24 Market Integrity Rules (MIRs) that state that for the purpose of the client money obligations, a client does not include an RBC of a Market Participant. In August 2013 ASX considered the use of the ICA structure for RBC principal positions as part of the introduction of ASX's new Client Clearing Service. There was mixed feedback from Participants and clients (refer to ASX's December 2013 response to consultation). Accordingly, ASX decided it should not pre-empt regulatory reform and did not proceed with the initiative as part of the new Client Clearing Service.</p> <p>Given the mixed feedback received in 2013, ASX is not in a position to implement this initiative as part of this package of enhancements. This initiative would require further consultation with the market and the support of ASIC to amend the Market Integrity Rules.</p> <p>ASX will separately assess the business case for providing this option as a future enhancement to ASX's Client Clearing Service.</p>

	Question/Comment	ASX response
OTC Client Clearing Service Jurisdictions	Does ASX intend to extend its OTC Client Clearing Service to clients in jurisdictions other than Australia and Singapore?	<p>As part of the rule package to introduce Deliverable Swap Futures in H2 2015, ASX will extend client eligibility for its OTC Client Clearing Service to clients in Member States of the European Union. A client in a Member State of the European Union will need to be a Professional Client or Eligible Counterparty (as defined under the Markets in Financial Instruments Directive 2004/39/ED (MiFID 1) as in force from time to time or such corresponding designation under substitute legislation).</p> <p>ASX welcomes further input from Clearing Participants and clients on other foreign jurisdictions to which ASX should consider extending client eligibility for its OTC Client Clearing Service.</p>