

# Austraclear

New framework to facilitate compliance with the  
Common Reporting Standard

CONSULTATION PAPER

SEPTEMBER 2016



### Invitation to comment

ASX is seeking submissions on the matters canvassed in this consultation paper by 4 November 2016. Submissions should be sent to:

E [catherine.eakin@asx.com.au](mailto:catherine.eakin@asx.com.au)

Office of General Counsel ASX Limited  
20 Bridge Street Sydney NSW 2000

Attention: Catherine Eakin

ASX prefers to receive submissions in electronic form. Submissions not marked as 'confidential' will be made publicly available on ASX's website.

If you would like your submission, or any part of it, to be treated as 'confidential', please indicate this clearly in your submission. ASX is available to meet with interested parties for bilateral discussions on the matters outlined in this consultation paper.

### Contacts

For general enquiries, please contact:

**Wayne Jordan** – Manager, Austraclear

T +61 2 9227 0034

E [wayne.jordan@asx.com.au](mailto:wayne.jordan@asx.com.au)

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## Introduction

### Background

The Common Reporting Standard (**CRS**) is a new global standard for the collection, reporting and exchange of financial account information of foreign tax residents, to combat tax evasion. CRS obligations will apply in Australia from 1 July 2017. The CRS is available [here](#).

Under the CRS, Austraclear must collect and report financial account information about a Participant who holds Deposited Securities in the Austraclear System to the Australian Taxation Office (**ATO**) if the Participant or individuals controlling the Participant are foreign tax residents, unless an exception applies.

## Implementation of CRS

### Austraclear's framework for CRS compliance

In order to support Austraclear's compliance with the CRS, ASX proposes to:

- introduce new eligibility criteria for Participants that hold Deposited Securities in the Austraclear System to align with CRS; and
- require pre-existing and prospective Participants that hold Deposited Securities to certify their status under the CRS and to notify Austraclear of any change in that status.

The proposed amendments to the Austraclear Regulations to introduce the framework for CRS compliance are available [here](#).

### Eligible Entities

To be eligible to hold Deposited Securities in Austraclear, ASX proposes to require a Participant to satisfy one of the following entity classifications under CRS (all **Eligible Entities**):

- Governmental Entity. This category includes bodies governing municipalities and wholly-owned government entities that meet prescribed criteria; or
- International Organisation; or
- Central Bank; or
- a publicly traded company the stock of which is regularly traded on an established securities market (or a related entity of such a company); or
- Financial Institution. This category comprises Investment Entities, Custodial Entities, Depository Institutions and Specified Insurance Companies. However, this classification will not be satisfied if a Participant is an Investment Entity that (i) is located in a Non-Participating Jurisdiction; (ii) is managed by another Financial Institution<sup>1</sup>; and (iii) has a Controlling Person that is a foreign tax resident; or

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<sup>1</sup> This limb of the Investment Entity definition applies to managed investment entities such as funds, trusts and special purpose vehicles. Refer to Annexure 1 for definitions of "Non-Participating Jurisdiction", "Investment Entity managed by another Financial Institution" and "Controlling Person".



- an entity of a class not listed above that is an Australian tax resident only and is either:
  - an Active Non-Financial Entity (**NFE**). An entity may satisfy this criteria if:
    - > less than 50 per cent of its gross income and assets are or produce Passive Income; or
    - > it is wholly owned by a Governmental Entity, International Organisation or Central Bank; or
    - > it is a holding NFE that is a member of a nonfinancial group; or
    - > it is a start-up NFE; or
    - > it is an NFE that is liquidating or emerging from bankruptcy; or
    - > it is a Treasury centre that is a member of a nonfinancial group; or
    - > it is a non-profit NFE (this includes religious, charitable and educational institutions that meet prescribed criteria); or
  - a Passive NFE that does not have a Controlling Person that is a foreign tax resident. An entity will be a Passive NFE if it is not a Financial Institution or an Active NFE (refer above).

Key definitions in the CRS relevant to the characterisation of Eligible Entities are set out in **Annexure 1** to this Consultation Paper.

Under ASX's proposal, Participants that are not Eligible Entities may continue to maintain Cash Records with Austraclear, however, any Deposited Securities will have to be held through third parties.

### Timing of proposed amendments

ASX intends to implement the proposed amendments in Q4 2016 so that all Participants holding Deposited Securities are Eligible Entities on 1 July 2017 when CRS obligations commence in Australia.

#### **Key Operating Rules:**

Austraclear Regulations: 1.1 (Definitions), 17.2 (Security Records and Security Sub-Accounts of Participants)

Austraclear Procedures: 3.16 (Information and Undertakings), 17.2(a) (Eligibility for authorisation to hold Deposited Securities)

#### **Consultation Questions:**

- (1) Do you have any comments on the Participant eligibility criteria proposed in the consultation paper?
- (2) Are you a Participant holding Deposited Securities that will not be an Eligible Entity? What kind of entity are you? Please describe the impact of this proposal on your business; quantify costs where possible.
- (3) Do you have any comments on the proposed timing for introduction of these changes?



## Next steps

### Consultation feedback

ASX seeks Participant views on the proposed amendments to the Austraclear Regulations. Submissions should be made by 4 November 2016. ASX welcomes the opportunity to discuss the draft amendments with interested parties (refer to contact details on page 2).

## Annexure 1: Key Definitions

*This Annexure summarises a number of the key definitions contained in the CRS that are used in this Consultation Paper. For more comprehensive definitions you should refer to the CRS available [here](#).*

Term	Definition
<b>Active Non-Financial Entity (Active NFE)</b>	<p>The term Active NFE means any NFE that meets any of the following criteria:</p> <ul style="list-style-type: none"><li>• less than 50 per cent of its gross income and assets are or produce Passive Income; or</li><li>• it is a Governmental Entity, an International Organisation, a Central Bank or an entity wholly owned by one or more of the foregoing; or</li><li>• it is a holding NFE that is a member of a nonfinancial group; or</li><li>• it is a start-up NFE; or</li><li>• it is an NFE that is liquidating or emerging from bankruptcy; or</li><li>• it is a Treasury centre that is a member of a nonfinancial group; or</li><li>• it is a non-profit NFE that meets all of the following requirements:<ul style="list-style-type: none"><li>○ it is established and operated exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes;</li><li>○ it is exempt from income tax in its country of residence;</li><li>○ it has no members who have a proprietary or beneficial interest in its income or assets;</li><li>○ income and assets must not be distributed to a private person or non-charitable entity other than pursuant to the conduct of the NFE's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property purchased by the NFE; and</li></ul></li></ul>

Term	Definition
	<ul style="list-style-type: none"> <li>o upon the NFE's dissolution, all of its assets must be distributed to a Governmental Entity or other non-profit organisation.</li> </ul>
<b>Central Bank</b>	An institution that is by law or government sanction the principal authority issuing instruments intended to circulate as currency.
<b>Controlling Person</b>	<p>The natural persons who exercise control over an entity.</p> <p>In the case of a trust, this means the settlor(s), the trustee(s), the protector(s), the beneficiary(ies) and any other natural person(s) exercising ultimate effective control over the trust.</p>
<b>Custodial Institution</b>	Any entity that holds, as a substantial portion of its business, financial assets for the account of others. Substantial means equal to or more than 20 per cent of the entity's gross income.
<b>Depository Institution</b>	Any entity that accepts deposits in the ordinary course of a banking or similar business.
<b>Financial Institution</b>	A Custodial Institution, a Depository Institution, an Investment Entity, or a Specified Insurance Company.
<b>Governmental Entity</b>	<p>The term "Governmental Entity" means the government of a jurisdiction, any political subdivision of a jurisdiction (which, includes a state, province, county, or municipality), or any wholly owned agency or instrumentality of a jurisdiction or of any one or more of the foregoing (each, a "Governmental Entity"). This category includes integral parts, controlled entities, and political subdivisions of a jurisdiction.</p> <p>(1) An "integral part" of a jurisdiction means any person or body that constitutes a governing authority of a jurisdiction. The net earnings of the governing authority must be credited to its own account or to other accounts of the jurisdiction, with no portion inuring to the benefit of any private person.</p> <p>(2) A controlled entity means an entity that is separate in form from the jurisdiction, provided that:</p> <ul style="list-style-type: none"> <li>a) the entity is wholly owned and controlled by one or more Governmental Entities directly or through one or more controlled entities;</li> <li>b) the entity's net earnings are credited to its own account or to the accounts of other Governmental Entities, with no income inuring to the benefit of any private person; and</li> </ul>

Term	Definition
	<p>c) the entity's assets vest in Governmental Entities upon dissolution.</p> <p>(3) Income does not inure to the benefit of private persons if such persons are the intended beneficiaries of a governmental programme, and the programme activities are performed for the general public with respect to the common welfare or relate to the administration of some phase of government.</p>
<b>International Organisation</b>	<p>The term "International Organisation" means any international organisation or wholly owned agency or instrumentality thereof. This category includes any intergovernmental organisation (including a supranational organisation):</p> <p>(1) that is comprised primarily of governments;</p> <p>(2) that has in effect a headquarters or substantially similar agreement with the jurisdiction; and</p> <p>(3) the income of which does not inure to the benefit of private persons.</p>
<b>Investment Entity</b>	<p>Includes two types of entities:</p> <p>(1) an entity that primarily conducts as a business trading, investing, administering or managing financial assets or money on behalf of a customer.</p> <p>(2) an entity the gross income of which is primarily attributable to investing, reinvesting, or trading in financial assets where the entity is managed by another entity that is a Depository Institution, a Custodial Institution, a Specified Insurance Company, or the first type of Investment Entity.</p> <p>An entity will be treated as primarily conducting a business or an entity's gross income will be primarily attributable, if the entity's gross income attributable to the relevant activities equals or exceeds 50 per cent of the entity's gross income.</p>
<b>Investment Entity managed by another Financial Institution</b>	<p>An entity is managed by another financial institution if the managing entity performs, directly or through another service provider on behalf of the managed entity, investment, administration or management of financial assets or money. However, an entity does not manage another entity if it does not have discretionary authority to manage the entity's assets (in whole or in part).</p>
<b>Non-Financial Entity (NFE)</b>	<p>Any entity that is not a Financial Institution.</p>

Term	Definition
<b>Non-Participating Jurisdiction</b>	If the location of an entity is not listed <a href="#">here</a> then the entity is likely to be located in a Non-Participating Jurisdiction.
<b>Passive Income</b>	Generally includes the portion of gross income consisting of: <ul style="list-style-type: none"> <li>• Dividends</li> <li>• Interest</li> <li>• Rents and royalties</li> <li>• Annuities</li> <li>• The excess of gains over losses from the sale or exchange of financial assets that give rise to the Passive Income described above</li> <li>• The excess of gains over losses from transactions (including futures, forwards, options, and similar transactions) in any financial assets.</li> <li>• The excess of foreign currency gains over foreign currency losses</li> <li>• Net income from swaps</li> <li>• Amounts received under cash value insurance contracts</li> </ul>
<b>Passive NFE</b>	(1) Any NFE that is not an Active NFE; or (2) An Investment Entity located in a Non-Participating Jurisdiction that is managed by another Financial Institution.
<b>Specified Insurance Company</b>	Any entity that is an insurance company (or the holding company of an insurance company) that issues, or is obliged to make payments with respect to prescribed insurance contracts.