



# ASX clearing and settlement operating rules review and refresh

**Response to consultation feedback on proposed amendments to:**  
**ASX Clear Operating Rules and Procedures**  
**ASX Settlement Operating Rules and Procedures**  
**Austraclear Regulations and Procedures**

December 2024



ASX is available to meet with interested parties for bilateral discussions on these matters.

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## Response to consultation feedback

On 13 May 2024, ASX released a [Consultation Paper](#) seeking feedback on proposed amendments to the ASX Clear Operating Rules and Procedures, ASX Settlement Operating Rules and Procedures, and Austraclear Regulations and Procedures arising out of the ASX five year clearing and settlement operating rules review and refresh.

ASX received submissions from 5 stakeholders on the Consultation Paper including Participants and industry bodies. Much of the feedback received in these submissions related to matters that were not the subject of consultation. ASX is considering those matters and will respond to stakeholders bilaterally. Where the feedback did relate to the matters the subject of the consultation ASX's responses are set out in **Schedule 1**.

ASX also received a number of submissions on a separate Consultation Paper for ASX Clear (Futures) published at the same time that proposed corresponding amendments relating to Emergency Powers, Default Management, Information requests, Recovery contacts and notifications. Given that the two ASX CCPs have a number of common stakeholders and the feedback is equally relevant to ASX Clear, ASX has also included the feedback in this Response to Consultation.

As a result of the feedback received ASX intends to make the amendments outlined below.

## Amendments as a result of feedback

### 1.1. Updating Recovery contacts and BCP Officer

In the Consultation Paper, ASX proposed that Participants would have an obligation to update Recovery contacts and BCP Officers to ASX Clear within 10 Business Days (Procedure to ASXCOR 4.7.1). Several Participants recommended that ASX align the notice period with the 28 day notice period that ASIC requires for director changes. ASX has adopted this feedback and will extend the period within which notification of changes to directors, Recovery contacts and BCP Officers can be made to 28 days.

### 1.2. Scope of information request power

In the Consultation Paper, ASX proposed a new power that Participants provide ASX Clear and ASX Settlement with any information that it reasonably requests within the time specified in the request (ASXCOR 1.8A.1 / ASXSOR 3.8A.1). In response to feedback, ASX has limited the new power to information that relates to the Participant's business in its capacity as a Participant.

### 1.3. Express power to sell a defaulter's portfolio

In the Consultation Paper, ASX proposed to introduce a new express power allowing ASX Clear to sell a defaulter's portfolio rather than close-out or auction the portfolio (refer to ASXCOR 15.2.1(g)). Feedback indicated that Participants were concerned that ASX might sell a portfolio directly to a Client without the prior approval of the Client's Participant. To address Participant concerns, ASX has amended the rules to contemplate the prior approval of a Participant is required.

## Other feedback received

Comments received and ASX's response to them are set out in **Schedule 1**.

## Additional amendments

ASX also proposes to make a number of additional amendments that were not part of the original consultation (all of these have been included in yellow shading in the final draft rules and procedures). These include the following:

- **Inclusion of relevant Standards in organisational requirements** (ASX Clear & ASX Settlement): ASX intends to amend the Procedures to add specific compliance, risk management, and security and resilience standards to clarify the expectations of ASX Clear and ASX Settlement in relation to participant processes for the purpose of organisational requirements (refer to Procedure to ASXCOR 3.5.1 and Procedure to ASXSOR 14.18.1). These Standards will also be included in the rulebooks for ASX Clear (Futures), ASX 24 and ASX Limited.
- **Disaster recovery and Business Continuity Planning Officer** (ASX Settlement): The inclusion of a BCP Officer in the ASX Settlement Rules was omitted by oversight in the consultation. The amendments reflect the approach taken in relation to the ASX CCPs (refer to ASXSOR 6.21.1 and the corresponding Procedure; Procedure to ASXSOR 4.6.3).
- **Update to Procedure for allocation of Derivatives Market Contracts** (ASX Clear): The times in the Procedure to ASXCOR 11.1.1 (Participant may allocate Derivatives Market Contracts) have been updated to reflect current practice.
- **Removal of notification of change in control and power to suspend** (Austraclear): In order to align with ASX Settlement, ASX intends to remove the requirement that Participants, Participating Banks and Foreign Currency Settlement Banks notify a change of control to Austraclear, and Austraclear's power to suspend the Participant, Participating Bank or Foreign Currency Settlement Bank following such notification (refer to Austraclear Regulations 3.9, 3.10, 29.5(d)).
- **Deletion of FRAs and Swaps** (Austraclear): ASX intends to delete Procedures relating to FRAs and Swaps no longer settled in Austraclear (refer to Austraclear Procedure 12.10.2).
- **Update references to reflect RBA changes to the RITS Regulations made in 2017** (Austraclear): Austraclear intends to make some minor changes to bring the Austraclear Regulations into line with the RBA changes made to the RITS Regulations in 2017 (refer to Austraclear Regulations 23.6 and 24.2).
- **ASX Net Connection** (Austraclear): Austraclear intends to add connectivity requirements to the Regulations to reflect the obligations as set out in Guidance Note 10 – *Business Continuity and Disaster Recovery* and has taken the opportunity to update thresholds and clarify which entities will be subject to this requirement (Austraclear Procedure 2.4). Impacted Austraclear Participants have been consulted.

## Revised draft rule amendments

The revised draft rule amendments incorporating the changes referred to above which have been made by ASX in response to consultation feedback (refer to yellow shading), are available below:

- [ASX Clear Operating Rules and Procedures](#)
- [ASX Settlement Operating Rules and Procedures](#)
- [Austraclear Regulations and Procedures](#)

## Next steps

ASX will shortly informally lodge the amended ASX Clear Operating Rules and Procedures, ASX Settlement Operating Rules and Procedures, and Austraclear Regulations and Procedures with ASIC seeking regulatory clearance. Subject to regulatory clearance, the amendments are expected to take effect in H2 2025. ASX will publish a market notice to confirm the final terms and effective date closer to the time.

## Schedule 1: Table of substantive feedback and ASX responses

No.	Key Issue	Comment	ASX Response	Relevant ASX Entities for this consultation
<b>Emergency Powers</b>				
1.	Undesirable Situation or Practice (ASXCOR 16.2)	The purposes set out in (a) and (b) ought to be sufficient. ASX should either delete (c) or provide guidance regarding the circumstances in which it would be relied upon	<p>ASX intends to proceed with this change. The proposed language tracks s821A of the Corporations Act that requires a CS facility licensee, to the extent that it is reasonably practicable to do so, to:</p> <ul style="list-style-type: none"> <li>(a) do all things necessary to ensure that the facility's services are provided in a fair and effective way; and</li> <li>(b) comply with the Financial Stability Standards and do all other things necessary to reduce systemic risk.</li> </ul> <p>The intention of broadening the power is to equip ASX Clear with the powers that may be necessary to comply with its obligations as a CS facility licensee (rather than simply focusing on fair, orderly and transparent trading). ASX's global benchmarking indicates that SGX has very similar powers.</p>	ASX Clear
2.		Emergency powers should be used cautiously. The use of tools (such as contract tear-up, VM gain haircutting, and forced position allocation/reduction/liquidation) and consequences should be clearly defined. Clear guidance is crucial for participants to assess and effectively manage their risks.	<p>ASX agrees that Emergency Powers should be used with caution.</p> <p>The existing ASX Recovery Rules set out the recovery tools that can be used by the ASX CCPs and the circumstance of their use (these tools include VM gains haircutting and partial termination of CPs' positions to restore the matched-book). The proposed Emergency Powers for the ASX CCPs are in addition to the powers under the ASX Recovery Rules and are intended to ensure that the ASX CCPs have the requisite powers to manage situations which pose a systemic risk to the Australian financial system or which threaten the fair and effective operation of the ASX CCPs. They will exist alongside, but</p>	ASX Clear

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			separate from, the Emergency Powers of the ASX Markets which are cleared by the ASX CCPs. The proposed ASX CCP Emergency Powers cover the theoretically possible set of adverse circumstances where a Market Operator does not consider it appropriate to exercise its Emergency Powers to manage these circumstances but the ASX CCP considers it appropriate so to do (reflecting the somewhat different legal/licence obligations of CCPs and Market Operators).	
3.	Recovery contacts (Procedure to ASXCOR 4.7.1)	Recommends that ASX utilise mailing lists instead of individual emails to mitigate operational risks caused by turnover.	Under the proposed Procedure CPs will have an obligation to update Recovery contacts which should mitigate operational risks caused by turnover. ASX requires the details of people within the organisation that it can contact directly in the event of a recovery situation to ensure appropriate escalation.	ASX Clear
4.	Recovery contacts (Procedure to ASXCOR 4.7.1)	Recommended that the proposal that the change in Recovery contacts be notified to ASX within 10 business days be extended to 30 days, noting internal processes run on different period bases and these roles are not likely to be a Director or Responsible Manager where the departure would be noted in a weekly report.	In response to feedback, ASX will extend the period within which notification of changes can be made to 28 days.	ASX Clear
<b>Information request</b>				
1.	Scope of information request power (ASXCOR 1.8A.1 / ASXSOR 3.8A.1)	Requested inclusion of qualifier that any information request should be reasonably necessary to ensure the CP's compliance with obligations under the ASXCLF Rules.	In response to feedback, ASX intends to limit ASX Clear's new power to request information to information that relates to the Participant's business in its capacity as a Participant.	ASX Clear ASX Settlement

No.	Key Issue	Comment	ASX Response	Relevant ASX Entities for this consultation
2.	Scope of information request power (ASXCOR 1.8A.1 / ASXSOR 3.8A.1)	Requested further clarification to link reasonableness specifically to activities within the relevant markets, taking into account ASX's current extended access based on financial considerations.	The proposed qualification of 'reasonableness' will be assessed in the context of the ASX CS Facility's obligations under its CS facility licence and the Financial Stability Standards.	ASX Clear ASX Settlement
3.	Scope of information request power (ASXCOR 1.8A.1 / ASXSOR 3.8A.1)	Suggested there is ambiguity in what ASX Clear 'may reasonably request'. Unclear what new power ASX is achieving from proposed rule. Requested that ASX not be selective in its approach to align with other global markets.	ASX does not intend to limit this power to information required to ensure a participant's compliance with rules because ASX wants to ensure that it has sufficient powers to request information from a participant if it needs such information to comply with its own obligations under the Corporations Act and the Financial Stability Standards. ASX notes that its benchmarking exercise indicated that many overseas CCPs had the power to request information along the lines we consulted on including CME, SGX, ICE Clear Europe, HK Exchange. ASX intends to include the rule in the same form in the ASX Clear, ASX Settlement and ASX Clear (Futures) Operating Rules.	
<b>Consultation framework</b>				
1.	Consultation framework (ASXCOR 1.2A / ASXSOR 1.2A / Austraclear Reg 6.12)	Stakeholders support the changes to the ASX Settlement and ASX Clear operating rules that provide for a consultation framework in relation to material rule amendments. It is important that participants are consulted on material rule amendments impacting them and that this is reflected in the rules.	ASX agrees that it is important to consult participants on material rule amendments that impact them. The inclusion of the consultation framework in the rules reflects ASX's existing practice.	ASX Clear ASX Settlement Austraclear
<b>Default Management</b>				
1.	Express power to sell defaulter's portfolio (ASXCOR 15.2.1(g))	ASX should clarify:	ASX expects that in most defaults ASX will close-out (or auction) open positions of a defaulting participant that are not	ASX Clear

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		<ul style="list-style-type: none"> <li>- The specific circumstances under which the CCP can or may opt for off-market close-out or close-out arrangements with selected parties.</li> <li>- The criteria, methodology, and elements employed by the CCP to unilaterally determine the close-out price.</li> </ul>	<p>ported to an alternate CP (Note: ASX Clear intends to consult on an auction framework shortly). However, in circumstances where there are fewer participants who clear the relevant product or the product itself is not very liquid ASX may consider a sale.</p> <p>ASX expects that an off-market close-out or sale price would not be unilaterally determined but the result of a negotiation between ASX and the selected counterparty. In agreeing a close out value, ASX expects to take into account the calculation of the mid-price of the portfolio. For both cash market and derivative products this would be off pricing in the current market. The negotiated price and mid-price would then be presented to the Default Management Committee (DMC) for its agreement. The DMC would consider a range of factors when agreeing to the price including:</p> <ul style="list-style-type: none"> <li>- The erosion of margin resources from the negotiated price and any subsequent impact on the default fund.</li> <li>- Current liquidity and volatility in the respective markets.</li> <li>- The size of the difference between the mid-price and the negotiated price.</li> <li>- The expected cost and length of time to close out via alternative methods (default broker orders or auction).</li> </ul>	
2.	Express power to sell defaulter's portfolio (ASXCOR 15.2.1(g))	Strongly recommend ASX to introduce clear criteria on when direct sell for defaulter's portfolio would be applied (like market share of largest participant, Open Interest, number of active participants) before Auction.	<p>ASX expects that an off-market close-out or sale price would not be unilaterally determined but the result of a negotiation between ASX and the selected counterparty. In agreeing a close out value, ASX expects to take into account the calculation of the mid-price of the portfolio. For both cash market and derivative products this would be off pricing in the current market. The negotiated price and mid-price would then be presented to the Default Management Committee (DMC) for its agreement. The DMC would consider a range of factors when agreeing to the price including:</p> <ul style="list-style-type: none"> <li>- The erosion of margin resources from the negotiated price and any subsequent impact on the default fund.</li> <li>- Current liquidity and volatility in the respective markets.</li> <li>- The size of the difference between the mid-price and the negotiated price.</li> <li>- The expected cost and length of time to close out via alternative methods (default broker orders or auction).</li> </ul>	ASX Clear
3.	Express power to sell defaulter's portfolio (ASXCOR 15.2.1(g))	Recommend establishment of a Default Management Group (as exists for OTC on ASX Clear (Futures)) to assist with choice of tool and pricing.	ASX does not propose to establish a DMG as part of the governance framework for managing the default of a Participant. The DMG for OTC was primarily set up to provide additional skills and experience in hedging, pricing and	ASX Clear



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			executing OTC products. ASX considers that it has sufficient in-house expertise to manage the default of an ASX Clear Participant.	
4.	Express power to sell defaulter's portfolio (ASXCOR 15.2.1(g))	Clients should not be permitted to direct acquire a defaulter's portfolio without the CP's consent.	ASX would not sell a portfolio directly to a client without the prior approval of the client's Participant. ASX proposes to amend ASXCOR 15.2.1(g) to contemplate this rather than exclude Clients entirely.	ASX Clear
5.	Business Continuity arrangements (Procedure to ASXCOR 4.7.1)	Recommended that the proposal that the change in BCP officer be notified to ASX within 10 business days be extended to 30 days, noting internal processes run on different period bases and this role is not likely to be a Director or Responsible Manager where the departure would be noted in a weekly report.	In response to feedback, ASX will extend the period within which notification of changes can be made to 28 days.  ASX has also extended the time to 28 days for the notification of a change in directors, liquidity officer and Recovery contacts.	ASX Clear
6.	Risk Consultative Committee (ASXCOR 1.23.1)	It appears to be inconsistent to use will and may in relation to invitations to join the Risk Consultative Committee (RCC).	There is no inconsistency in the drafting of this rule. ASX Clear has invited all Participants to attend the RCC. At this point in time ASX Clear has not invited Clients to participate in the RCC. Accordingly, the invitation to Clients has been amended to 'may' so that they may be invited in the future but to ensure that there is no current obligation on ASX Clear to do so in the present given its current practice.	ASX Clear
<b>Requirement Participant notify ASX of action against them</b>				
1.	Participant notify ASXS of action against them (ASXSOR 4.6.1)	ASXSOR 4.6.1 requires participants to notify ASX Settlement in writing on or before the next Business Day if they are the subject of any regulatory, disciplinary or enforcement action by any market licensee, another clearing and settlement facility, the Commission or any	ASX notes that proposed ASXSOR 4.6.1 reflects the existing wording in ASXCOR 4.7.1(e) and is being introduced for alignment.	ASX Settlement

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		<p>other regulatory authority. This timeline is challenging in light of the practical aspects of receiving, processing and then drafting the notification to ASX. Recommended that this requirement be changed to at least two Business Days to allow for these processes to take place. This timeframe would also be consistent with the trust breach notification requirements. Note that there is no equivalent provision in the ASX Clear operating rules and interested to know if this is intentional on the part of ASX.</p>		