

# Fact Sheet for Insolvency Practitioners

## The role of ASX on default of a Participant

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*This summary information is provided for guidance only and should be read in conjunction with the ASX Operating Rules, ASX 24 Operating Rules, ASX Clear Operating Rules, ASX Clear (Futures) Operating Rules, ASX Settlement Operating Rules and Austraclear Regulations. It does not replace or vary those Rules.*

### Who this fact sheet is for

This fact sheet is for insolvency practitioners who have been or may be appointed as external administrator to an entity that is a participant of the financial market infrastructure operated by ASX i.e. ASX financial markets, clearing houses or settlement facilities (“**ASX FMI**”).

### The purpose of this fact sheet

The purpose of this fact sheet is to describe the function of ASX and the actions that ASX may take in the circumstance of an event of default of a participant.

This fact sheet is not intended to be an exhaustive statement of the framework for dealing with a participant default. Insolvency practitioners should seek their own professional advice about these matters.

Where concurrent external administrators have been appointed to a participant, ASX will deal with either or both of them as appropriate, having regard to the capacity in which they were appointed.

### ASX FMI

ASX operates two financial markets:

- The ASX market for the listing and trading of cash market products (e.g. shares, debentures, bonds, ETFs and warrants) and ETOs; and
- The ASX 24 market for the trading of interest rate, equity index, commodity and energy futures and options.

ASX operates two clearing houses providing central counterparty clearing services:

- ASX Clear Pty Limited (ASXCL) provides central counterparty clearing services for the ASX, Cboe and NSX markets as well as eligible over-the-counter equity related options; and
- ASX Clear (Futures) Pty Limited (ASXCLF) provides central counterparty clearing services for the ASX 24 market and eligible OTC A\$ interest rate derivatives.

ASX operates two settlement facilities and central securities depositaries:

- ASX Settlement Pty Limited (ASX Settlement) provides a settlement system for, and operates the CHESS sub-register which can record holdings in, securities traded on ASX and other Australian financial markets; and
- Austraclear Pty Limited (Austraclear) provides depositary, registration and settlement services for debt instrument securities in Australian financial markets.

## ASX powers in an external administration

The conduct of the relevant ASX FMI and its participants is governed by its operating rules, which have legal effect as a contract between them.

These rules set out the circumstances in which the ASX FMI may declare an ‘event of default’<sup>1</sup> in respect of a participant. These include:

- the participant becomes an externally administered body corporate<sup>2</sup> (e.g. it has a liquidator, administrator or receiver appointed);
- the participant fails to meet an obligation to the ASX FMI under the applicable operating rules (e.g. in the case of a clearing participant a failure to meet a margin call under a novated market contract).

These rules also set out the steps the ASX FMI may take as a consequence of an event of default. These include:

- the relevant ASX FMI suspending the participation of the defaulting participant;
- the clearing house closing out novated market contracts of the defaulting participant, entering into transactions to meet its obligations to the rest of the market under such contracts in its role as central counterparty or transferring the defaulting participant’s open client positions (if individually accounted for at the clearing house) to another non-defaulting clearing participant where the client has an existing contractual relationship;
- the settlement facility giving the participant’s clients access to holdings controlled by the participant or requiring the withdrawal from that facility of securities that had been deposited by the participant.

These powers are exercised to minimise disruption to the market from the default, in accordance with the licence obligations of the ASX FMI. The exercise of these powers is protected by Australian legislation which applies irrespective of the participant’s jurisdiction.

For an entity that is a participant of two or more ASX FMIs, different outcomes may apply to those participations in the circumstances of an event of default of that participant.

Further information regarding the steps that the clearing house or settlement facility may take in managing the default of a clearing participant or settlement participant, legal protections for those steps, as well as the general phases which apply in managing the default of a clearing participant, is set out in the [Clearing Participant Default Overview for ASXCL](#), the [Clearing Participant Default Overview for ASXCLF](#) and the [Settlement Participant Default Overview](#).

## Ongoing participation of externally administered participant

As an alternative to declaring an event of default and suspending the entity, ASX may facilitate the ongoing participation of an externally administered participant where ASX considers that it would be beneficial to the market (in a manner consistent with its license obligations) and it is satisfied that the participant is able to properly perform its functions and meet its obligations.

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<sup>1</sup> A declaration of an event of default and the steps to be taken is determined separately by each ASX FMI, at its discretion.

<sup>2</sup> Referred to as a “Chapter 5 body corporate” in the Corporations Act 2001 (Cth)

For example, ASX Settlement may consider facilitating the ongoing participation of an externally administered participant where the external administrator confirms it:

- has funds and / or financial products in place (as applicable) to perform settlement of existing cash market transactions and remains operationally capable of participating in settlement; or
- will expeditiously process client instructions to transfer or convert participant sponsored holdings and remains operationally capable of receiving and giving effect to such instructions.

Refer to the [Settlement Participant Default Overview](#) for further requirements in those instances.

A participant's ongoing participation may be made subject to conditions which limit it to the performance of certain functions.

Additional considerations for the exercise of powers by the ASX FMI may apply where the participant is an ADI which is subject to the statutory management regime (or overseas equivalent).

### Ongoing compliance with operating rules

A participant to whom an external administrator has been appointed continues to be bound by the operating rules of the relevant ASX FMI, including where its participation has been suspended.

### Dealing with clients of defaulting participants

It is not the function of the ASX FMI to protect clients from the default of their participant. It is also not the function of the ASX FMI to deal with those clients through that default<sup>3</sup>.

Transactions between a defaulting participant and its clients are governed by the client agreement in place between them. Accordingly the responsibility for dealing with clients of a defaulting participant rests with the participant (and its external administrators). Any client queries about positions, rights and entitlements received by ASX will be referred back to the external administrators.

An external administrator should ensure that the participant maintains key infrastructure required to allow it to manage client positions off its books, including in the case of a clearing participant reconciling moneys and information provided by ASX as part of its default management process with those client positions (referred to further in the [Clearing Participant Default Overview for ASXCL](#) and the [Clearing Participant Default Overview for ASXCLF](#)). The necessary infrastructure depends on the participant's arrangements but may include:

- ongoing ability to send and receive electronic communications; and
- access to required clearing and settlement records.

### Communications by and with the ASX FMI

If an ASX FMI imposes conditions on a participant or suspends or terminates a participant, ASX will notify the participant, and where ASX has been notified of the appointment of an external administrator to that entity,

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<sup>3</sup> An exception applies in the case of futures, options and OTC positions recorded in a client account held by the participant with ASXCLF, with the client able to deal directly with ASXCLF regarding the transfer of positions in, and the collateral value for that account, from their defaulting participant to a non-defaulting participant.



the external administrator - ordinarily by email.

ASX will also notify the market of the suspension or termination of a participant, ordinarily by market notice available on [asxonline](#) and [asx.com.au](#).

Where an external administrator has been appointed to a participant it should make contact with the relevant ASX FMI as soon as it becomes aware that that entity is a participant of that ASX FMI. If it is possible to make contact before a formal appointment of the external administrator, then this should be considered and, if appropriate, undertaken.

For further queries, please contact ASX via [asx.com.au/contact](#).