



# ASX CLEAR (FUTURES) OPERATING RULES

## CONTENTS

<b>PART 1</b>	<b>DEFINITIONS</b>
<b>PART 2</b>	<b>GENERAL</b>
<b><u>PART 3</u></b>	<b><u>REGISTRATION OF MARKET CONTRACTS AND OBLIGATIONS OF ASX CLEAR (FUTURES)</u></b>
<b>PART 7</b>	<b>PROCEDURES ON A DEFAULT</b>
<b>PART 9</b>	<b>MISCELLANEOUS PROVISIONS</b>

**SCHEDULES TO THE RULES OF ASX CLEAR (FUTURES)**

**OTC RULEBOOK**

- (h) *eighth*, any other monies or other assets available to ASX Clear (Futures) which have been designated under the Procedures for the purposes of this paragraph up to the amount specified in the Procedures (but excluding any other assets of ASX Clear (Futures) which have not been so ~~prescribed~~designated); and
- (i) *ninth*, Recovery Assessments received from one or more Clearing Participants.

~~However, if the Recovery Rules apply then a Loss may be allocated in accordance with them.~~

A Commitment cannot be applied by ASX Clear (Futures) to discharge, or to compensate ASX Clear (Futures) for discharging, an obligation incurred before ASX Clear (Futures) makes its determination under Rule 5.1 to require the Commitment.

Amended 15/07/11, 01/07/13, 11/02/14, XX/XX/XX

*[Explanatory Note: the amendments to the waterfall of application of assets are to take into account the new mechanisms in the Recovery Rules, including to determine Recovery Assessments payable by Clearing Participants.]*

7.1A ASX Clear (Futures) may choose to aggregate the obligations it has incurred in respect of the Defaults of multiple Clearing Participants in Default during a Default Period and apply the assets referred to in Rule 7.1 to satisfy those aggregated obligations if ASX Clear (Futures) determines that it would be appropriate to do so.

If ASX Clear (Futures) does not choose to aggregate the obligations it has incurred in respect of the Defaults of those Clearing Participants in Default during a Default Period, ASX Clear (Futures) will, in satisfying its obligations, apply the assets referred to in Rule 7.1 separately and consecutively in respect of each Clearing Participant in Default.

Introduced XX/XX/XX

*[Explanatory Note: If more than one Default occurs during a Default Period, ASX Clear (Futures) may choose to aggregate the obligations it incurs in respect of such Defaults and apply the assets at each limb in the waterfall to the Defaults in aggregate.]*

7.1B ASX Clear (Futures) may apply the assets referred to in Rule 7.1 to satisfy its obligations irrespective of whether it has finally determined its obligations in respect of a Clearing Participant in Default or Clearing Participants in Default.

Introduced XX/XX/XX

*[Explanatory Note: this amendment clarifies that ASX Clear (Futures) may apply the assets set out in Rule 7.1 to meet obligations prior to its final determination of the total obligations of the Defaulting Clearing Participant(s)]*

7.2 To enable ASX Clear (Futures) to meet its obligations in a timely manner to Clearing Participants not in Default:

- (a) Pending the realisation of any part of the assets referred to in Rule 7.1 the Board may borrow or otherwise seek accommodation or make other financial arrangements as it sees fit.
- (b) Pending recovery of an asset in a paragraph of Rule 7.1 access may be had by ASX Clear (Futures) to assets referred to in a subsequent paragraph of Rule 7.1 subject to prompt adjustment when an asset in a preceding paragraph has been recovered PROVIDED THAT no access shall be had to the assets referred to in:

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 ~~or within such later time period notified by ASX Clear (Futures) to that Clearing Participant if ASX Clear (Futures) reasonably expects that the Clearing Participant's Open Contracts cannot be Closed Out or otherwise dealt with to ASX Clear (Futures)'s satisfaction in accordance with the Rules within 5 Business Days of receipt of the written notice of resignation.~~

*[Explanatory Note: the amendments provide that the time period for resignation may be increased if ASX Clear (Futures) reasonably expects that the Open Contracts of the resigning Clearing Participant cannot be adequately Closed Out or dealt with within 5 Business Days]*

- (c) Subject to Rules 11.1(d) and (e):
- (1) 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; and
  - (2) 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.
- (d) The confirmation by ASX Clear (Futures) that the Clearing Participant has satisfied the conditions in Rule 11.1(b)(2) or the effectiveness of the Clearing Participant's resignation does not affect any accrued rights which ASX Clear (Futures), a Related Body Corporate of ASX Clear (Futures), or other Clearing Participants have against the Clearing Participant or any accrued obligations which the Clearing Participant has to ASX Clear (Futures), a Related Body Corporate of ASX Clear (Futures) or to other Clearing Participants.
- (e) Without limiting Rule 11.1(d) above, following the Clearing Participant's resignation becoming effective:
- (1) the Rules continue to apply and ASX Clear (Futures) will continue to have jurisdiction in respect of the Clearing Participant concerning any conduct or any failure to comply with the Rules which occurred before the acceptance of the notice or termination of authority, whether that conduct or failure was by the Clearing Participant or by any other person for whose conduct the Clearing Participant was responsible;
  - (2) the Clearing Participant continues to be bound by any indemnity given by the Clearing Participant under these Rules; and
  - (3) other Rules continue to apply in respect of the Clearing Participant to the extent required to give effect to Rules 11.1(e)(1) and (2).

**Explanatory Note:**

The Recovery Rules may impact on the operation of this Rule.

Amended 01/07/13 and XX/XX/XX

*[Explanatory Note: these amendments clarify that following the resignation of a Clearing Participant, the Clearing Participant continues to be bound by any indemnity given under the Rules and the Rules will apply to the*

- (a) was entered into fraudulently by the Clearing Participant or the party to such Market Contract in relation to which the Clearing Participant holds an equivalent position (ie. of Buyer or Seller); or
- (b) was, to the knowledge of the Clearing Participant or such party entered into with an intention by one or both parties to the Market Contract to Default; or
- (c) was otherwise not entered into in a bona fide manner by the Clearing Participant or such party,

provided that:

- (i) the rights provided under this Rule to ASX Clear (Futures) shall not relieve the Clearing Participant from any obligations to ASX Clear (Futures) under the Open Contract; and
- (ii) the existence of or exercise of any rights under this Rule by ASX Clear (Futures) in relation to an Open Contract shall not affect or avoid ASX Clear (Futures) obligations under any other Open Contract whether or not arising from the registration of the same Market Contract.

31.8 ASX Clear (Futures), each Clearing Participant and each CPM Client acknowledge that Open Contracts are market netting contracts (as defined in the Payment Systems and Netting Act 1998) the terms of which incorporate, without limitation, any and all Rules which provide for, relate to or are in connection with the exercise of default rights, the netting, set-off or termination of obligations, the calculation or payment of termination values or net amounts, the obligation to make a payment, or a transfer of property, to meet a deposit or margin call, the enforcing of security, and the transfer of, or dealing with, rights, obligations or property or which otherwise affect the rights and obligations of the parties to the contracts, including, without limitation, [the Recovery Rules](#), Part 4 of the Rules (including Rule 49.2), and Rule 72 and the OTC Rules (including OTC Rule 5 and OTC Rule 6.12) and the Rules relating to the segregation of Client Accounts and Client Sub-Accounts.

Introduced 13/07/09 Amended 01/07/13, 11/02/14, 07/07/14

## **31A Registration of a Market Contract Allocated to a Facility Participant**

31A.1 Where a Market Contract is Allocated to a Facility Participant by a Full Participant, the Facility Participant agrees to accept that Market Contract or the position of either a Buyer or a Seller under a Market Contract for registration in accordance with these Rules provided the Full Participant arranges to have its trades registered with the Facility Participant by an entity that is a participant (as that term is defined in the Corporations Act) of the Facility Participant.

Introduced 04/12/02

31A.2 Where the positions of a Buyer and of a Seller under a Market Contract are registered separately with ASX Clear (Futures) and a Facility Participant respectively, upon such registration the Market Contract shall be extinguished and two new contracts which shall be binding on ASX Clear (Futures) and the Facility Participant respectively shall come into existence:

- (a) an Open Contract between ASX Clear (Futures) and the Buyer or the Seller, as the case may be, in terms identical to the Market Contract except that ASX Clear (Futures) shall have the rights and obligations as the Seller or the Buyer as the case may be.
- (b) a contract between a Facility Participant and the Seller or Buyer as the case may be in accordance with the rules of the Facility Participant.

- (b) by direct agreement with market participants or any other persons or as may be permitted or directed by the Relevant Exchange in accordance with Exchange Operating Rules,

and shall register any Market Contract so traded and may Close Out the Open Contract so traded against Open Contracts of the Clearing Participant as if such Market Contracts had been entered into by the Clearing Participant in Default.

- 72.3 At any time, ASX Clear (Futures) may calculate a net amount or amounts due and payable by the Clearing Participant in Default to ASX Clear (Futures) or ASX Clear (Futures) to the Clearing Participant in Default separately in respect of the House Account and the Client Account, and demand immediate payment of any net amount payable by the Clearing Participant in Default to ASX Clear (Futures).

Without limitation, the amounts netted by ASX Clear (Futures) may include the amounts determined to be payable under, or in connection with, the OTC Rules or the Recovery Rules.

Without limiting any of its rights or powers, ASX Clear (Futures) agrees that it will exercise its rights under this Rule 72.3 to calculate a net amount with respect to the Clearing Participant in Default. ASX Clear (Futures) may exercise any of its rights and powers and take any other actions in connection with the Clearing Participant in Default before, or after, it does so.

Introduced 13/07/09 Amended 01/07/13, 11/02/14

- 72.4 If a Clearing Participant has CPM Clients then the netting referred to in Rule 72.3 above is to be conducted separately in respect of each Client Sub-Account within the Client Account of that Clearing Participant and in respect of any remaining part of that Client Account. A net cash amount is to be payable in accordance with Rule 72.3 in respect of each separate netting which takes place.

Introduced 11/02/14

## 73 Loss

- 73.1 Any deficiency in the Accounts of the Clearing Participant in Default or Clearing Participants in Default after the application of Rule 72.1 shall be termed the Loss of ASX Clear (Futures) on the Default.

- 73.1A ASX Clear (Futures) may attribute to the relevant Account(s) of the Clearing Participant in Default or Clearing Participants in Default any costs, losses, penalties, fines, taxes, damages and expenses which ASX Clear (Futures) may incur, including reasonable legal fees incurred, in connection with the Default of that Clearing Participant in Default or Clearing Participants in Default. If the costs, losses, penalties, fines, taxes, damages and expenses are attributable to more than one Clearing Participant in Default, the amount of those costs, losses, penalties, fines, taxes, damages and expenses will be attributed to each Clearing Participant in the ~~proportion amounts~~ that ASX Clear (Futures), acting reasonably, determines to be appropriate.

*[Explanatory Note: these amendments clarify that ASX Clear (Futures) may allocate any costs, losses, penalties, fines, taxes, damages and expenses it incurs in connection with a Clearing Participant's Default to the relevant Account(s) of that Clearing Participant. However, if there is more than one Defaulting Clearing Participant, ASX Clear (Futures) may attribute such amounts in the ~~proportion amounts~~ it deems appropriate.]*

- 73.2 To meet any Loss ASX Clear (Futures) shall first apply up to the amount of the Loss, the Commitment of the Clearing Participant in Default made pursuant to the Rules.