

## **AUSTRACLEAR REGULATIONS**

...

### **1. INTERPRETATION**

#### **1.1 Definitions**

In these Regulations, unless the context otherwise requires:

...

[“CRS” has the meaning given to that term by section 396-110 of the Taxation Administration Act 1953 \(Cth\).](#)

...

[“FATCA Agreement” has the meaning given to that term by section 396-15 of the Taxation Administration Act 1953 \(Cth\).](#)

[“Financial Institution” has the meaning given in the FATCA Agreement.](#)

...

[“Reportable Person” means a Reportable Person as that term is defined in the CRS.](#)

...

DRAFT

## 17. SUB-PARTICIPANTS, PARTICIPANT PROXIES AND SECURITY RECORDS

### 17.1 Sub-Participants

Where an entity has been accepted under these Regulations as a Participant, subject to Regulation 4.2, Austraclear must:

- (a) facilitate the establishment of a Sub-Participant to enable the Participant to access and operate in the System; and
- (b) if requested by the Participant, facilitate the establishment of additional Sub-Participants.

Amended 22/08/07

### 17.2 Security Records and Security Sub-Accounts of Participants

- (a) [Austraclear may authorise a Participant to hold Deposited Securities through the System if the Participant satisfies the prescribed eligibility requirements.](#) Austraclear must keep a Security Record in respect of each [authorised](#) Participant.
  - (a2) [If a Participant ceases to satisfy the prescribed eligibility requirements under paragraph \(a\) or becomes aware of circumstances which will, or would reasonably be likely to, result in it ceasing to satisfy those requirements, the Participant must notify Austraclear as soon as practicable. The notice must specify in reasonable detail the circumstances giving rise to the actual or anticipated failure to satisfy the prescribed eligibility requirements.](#)
  - (a3) [If Austraclear receives a notice under paragraph \(a2\) or otherwise becomes aware that a Participant has ceased, or is reasonably likely to cease, to satisfy the prescribed eligibility requirements under paragraph \(a\), the Committee may direct the Participant to make other arrangements for holding Deposited Securities through the System. If the Participant fails to comply with the direction, the Committee may take one or both of the following actions:](#)
    - (i) [suspend or terminate the Participant Status of the Participant;](#)
    - (ii) [direct the Participant to Withdraw all Securities then appearing in its Security Record.](#)
  - (a4) [A Participant has no right of appeal against an exercise of the Committee's rights under paragraph \(a3\). Regulation 3.12 does not apply to the suspension of the Participant Status of a Participant under paragraph \(a3\). Regulation 3.14 applies to the suspension or termination of the Participant Status of a Participant under paragraph \(a3\).](#)
- (b) Each Sub-Participant of a Participant may have one or more sub-records (each a "**Security Sub-Account**" or "**Security Sub-Record**") which together with those of any other Sub-Participant of the Participant comprise the relevant Participant's Security Record.
- (c) Austraclear will create the first Security Sub-Account for each Sub-Participant (which is to be designated the "**House**" Security Sub-Account for that Sub-Participant) and the relevant Participant may create and maintain in the prescribed manner one or more additional Security Sub-Accounts for each Sub-Participant of that Participant.

Link to Procedures: [Rule 17 2 c Creation of Security Sub Acc](#)

Link to Procedures: [Rule 17 2 c Maintain Security Sub Acc](#)

...

## 21. NOTICES

...

### 21.6 Notices relating to Insolvency Events and Changes in Control [and Security Record Eligibility](#)

In addition to all other requirements as to notices under this Regulation 21, any notice given under Regulation 3.9 [or Regulation 17.2\(a2\)](#) to Austraclear must specifically be addressed to the prescribed person.

Link to Procedures: [Rule 21 6 Insolvency Change in Control](#)

...

DRAFT

## AUSTRACLEAR PROCEDURES, DETERMINATIONS AND PRACTICE NOTES

...

### 3. PARTICIPANTS GENERALLY

...

#### 3.16 Information and Undertakings

For the purposes of Regulation 3.16, Austraclear prescribes the information set out in this Procedure.

(A) ~~FATCA Information~~ under FATCA Agreement and CRS

(i) **Self-certification**

At Austraclear's request, a Participant ~~that has been authorised by Austraclear to hold Deposited Securities through the System under Regulation 17.2(a) in respect of which Austraclear keeps a Security Record~~ must provide a self-certification to Austraclear, in a form approved by Austraclear from time to time, that confirms the Participant's status under the ~~IGA~~ FATCA Agreement and the CRS. The Participant must provide the self-certification to Austraclear within one month of such request. The Participant must notify Austraclear within five Business Days if there is a change in the Participant's status as set out in the self-certification most recently submitted by the Participant.

(ii) **Periodic Reporting**

Each Participant ~~that has been authorised by Austraclear to hold Deposited Securities through the System under Regulation 17.2(a) in respect of which Austraclear keeps a Security Record that is not a Financial Institution but is a:~~

- (a) ~~not a Financial Institution but is a~~ Specified U.S. Person or a Passive NFFE with one or more Controlling Persons that are Specified U.S. Persons; or
- (b) ~~a Reportable Person or a Passive NFE with one or more Controlling Persons that are Reportable Persons~~ a Passive NFFE with one or more Controlling Persons that are Specified U.S. Persons,

must, within 3 months of the end of each calendar year, commencing with the calendar year that ends:

(c) (for a Participant reporting pursuant to paragraph (ii)(a)) on 31 December 2014; or

(d) (for a Participant reporting pursuant to paragraph (ii)(b)) on 31 December 2017,

provide Austraclear with the following information in the format Austraclear notifies to Participants from time to time:

- (ee) the name, address, jurisdiction of residence and ~~and U.S.~~ TIN of:
  - (i) the Participant; and
  - (ii) each Controlling Person that is (for a Participant reporting pursuant to paragraph (ii)(a)) a Specified U.S. Person or (for a Participant reporting pursuant to paragraph (ii)(b)) a Reportable Person (if applicable);

- (f) the date and place of birth of each Controlling Person that is a Reportable Person identified pursuant to paragraph (e)(ii) (if applicable);
- (~~dg~~) the identifying number of each Security Record kept by Austraclear in respect of the Participant during the calendar year;
- (~~eh~~) the aggregate face value of the Deposited Securities in each of the Participant's Security Records identified in (~~dg~~) as of the end of the calendar year or, if the Security Record was closed during the year, immediately before closure; and
- (~~fi~~) the total gross amount of interest, the total gross amount of dividends, and the total gross amount of other income generated with respect to the assets held in each of the Participant's Security Records, in each case paid or credited to or with respect to the relevant Security Record during the calendar year.

together with any additional information requested by Austraclear to comply with its reporting obligations.

In this Procedure 3.16(A):

- (j) for a Participant reporting pursuant to paragraph (ii)(a), the terms "Specified U.S Person", "Passive NFFE" and "Controlling Person" have the meanings given to them in the FATCA Agreement, and "TIN" refers to the U.S. federal taxpayer identifying number of the Participant or Controlling Person (as applicable);
- (k) for a Participant reporting pursuant to paragraph (ii)(b), the terms "NFE" and "Controlling Person" have the meanings given to them in the CRS, and "TIN" refers to the tax identification number used by the relevant tax administration to identify the Participant or Controlling Person (as applicable).

~~"IGA" means the Intergovernmental Agreement between Australia and the United States of America to improve international tax compliance and to implement FATCA executed on 28 April 2014 and given force by the Tax Laws Amendment (Implementation of the FATCA Agreement) Act 2014.~~

~~Any term in this Procedure 3.16(A) not defined in the Regulations will, unless the context otherwise requires, have the meaning that it has, from time to time, under the IGA.~~

Introduced 25/08/14

...

## 10. WITHDRAWALS

...

### 10.2 Other Withdrawal – Mandatory (all Securities)

#### (1) Default or other similar event affecting Securities

For the purposes of Regulation 10.2, the following circumstances are prescribed as circumstances in which a Participant **must** Withdraw a Security even if one or more of Regulations 10.1(a), (c) or (d) apply:

- (a) either:
  - (i) an Insolvency Event occurs with respect to the Obligor in relation to the Security; or
  - (ii) having regard to its obligations as the holder of a CS facility licence under Part 7.3 of the Corporations Act, Austraclear considers it is desirable to remove the Security from the System; or
  - (iii) an event occurs which in Austraclear's opinion is likely in future to result in the Paying Agent failing to effect a payment in relation to the Security when it is due to be made; and
- (b) Austraclear has given notice to the Owners of the Security that they must Withdraw the Security.

For the purposes of this [part of](#) Procedure 10.2:

**Insolvency Event** means, in respect of the Obligor in relation to a Security, any of the following events:

- (A) the Obligor becomes an externally administered body corporate within the meaning of the Corporations Act;
- (B) a person takes control of the Obligor or any substantial part of its business or property because the Obligor is, or is likely to become, insolvent;
- (C) the Obligor takes or seeks to take advantage of any bankruptcy, insolvency, reorganisation, moratorium or other similar law of any jurisdiction; or
- (D) any event occurs in respect of the Obligor which under the laws of any jurisdiction is analogous to any of the events described in paragraph (A), (B) or (C).

**Obligor** means, in relation to a Security, the issuer of the Security or a guarantor of any obligations of the issuer with respect to the Security.

#### (2) Participant ceases to be eligible to hold Deposited Securities through the System

For the purposes of Regulation 10.2, the following circumstances are prescribed as circumstances in which a Participant **must** Withdraw a Security even if one or more of Regulations 10.1(a), (c) or (d) apply:

- (a) the Committee has directed the Participant to make other arrangements for holding Deposited Securities through the System under Regulation 17.2(a3);
- (b) the Participant has failed to comply with the direction within the time specified by the Committee;  
and

(c) [the Committee has given notice to the Participant that it must Withdraw the Security.](#)

Introduced 19/09/08 Amended 12/03/09

...

DRAFT

## 11. PAYMENTS AND PRESENTMENT

...

### 11.6 Reporting to Taxation Authorities

For the purposes of Regulation 11.6, Austraclear prescribes the following information as information that Austraclear may report to the Australian Taxation Office from time to time:

- (i) in respect of each payment of interest for each Lodged Euroentitlement, the name and address of the Participant whose Cash Record is credited with such an amount, the amount so credited and the date on which it is so credited;
- (ii) such information as is required for Austraclear to comply with its obligations as an investment body under the Income Tax Assessment Act 1936 (Cth); and
- (iii) such information as is required for Austraclear to comply with its obligations as a Reporting ~~Australian~~ Financial Institution under the [IGA FATCA Agreement and the CRS in accordance with the Taxation Administration Act 1953 \(Cth\)](#).

~~In this Procedure, “IGA” means the Intergovernmental Agreement between Australia and the United States of America to improve international tax compliance and to implement FATCA executed on 28 April 2014 and given force by the Tax Laws Amendment (Implementation of the FATCA Agreement) Act 2014.~~

Amended 25/08/14



## 17. SECURITY RECORDS

### 17.2(a) Eligibility for authorisation to hold Deposited Securities

For the purposes of Regulation 17.2(a), and in addition to any other eligibility requirements prescribed by Austraclear from time to time, a Participant shall not be eligible to hold Deposited Securities through the System unless it:

- (a) (where the FATCA Agreement is applicable) (i) is a Financial Institution, or (ii) is not a Specified U.S. Person or a Passive NFFE with one or more Controlling Persons that are Specified U.S. Persons;
- (b) (where the CRS is applicable) is not a Reportable Person or a Passive NFE with one or more Controlling Persons that are Reportable Persons; and
- (c) has certified the matters in paragraph (a) and (b) (as applicable) in a form acceptable to Austraclear.

In this Procedure 17.2(a):

- (j) (where the FATCA Agreement is applicable) the terms “Specified U.S Person”, “Passive NFFE” and “Controlling Person” have the meanings given to them in the FATCA Agreement;
- (k) (where the CRS is applicable) the terms “Passive NFE” and “Controlling Person” have the meanings given to them in the CRS.

...

## 21. NOTICES

...

### 21.6 Notices relating to Insolvency Events and Changes in Control and Security Record Eligibility

For the purposes of Regulation 21.6, the persons ~~is~~are “General Manager ~~Business~~ Post Trade and Issuer Services Operations” and “Company Secretary, Austraclear Limited”.

Amended 22/08/07

...

DRAFT