

# **CAPITAL REQUIREMENTS GUIDANCE**

**ASX CLEAR OPERATING RULES**

**ASX CLEAR (FUTURES) OPERATING  
RULES**

FEBRUARY 2025



| DOCUMENT VERSION | DATE           | REASON FOR AMENDMENT   |
|------------------|----------------|--|
| 1.0              | March 2004     | Introduction of ASX and ACH Rules.   |
| 2.0              | January 2005   | Replace attachment 2, addition to section 3 (Signatory Requirements).  |
| 3.0              | July 2005      | Changes to returns required to be lodged and their due dates. Additional guidance on the use of approved subordinated debt documentation.  |
| 3.1              | January 2006   | Changes to NTA Return due to implementation of AIFRS. Key Risks and Internal Systems Statement deleted. Minor changes to guidance on the use of approved subordinated debt documentation.  |
| 3.2              | December 2008  | Update terminology and contact details. Clarification on ASX Return software. Changes to annual reporting requirements. Minor corrections.   |
| 3.3              | January 2009   | Update of changes to the minimum core capital requirement for ACH Clearing Participants that are subject to the Risk Based Capital Requirements.   |
| 4.0              | January 2010   | Core capital rule amendments for Risk Based participants. Updated contact details.   |
| 4.1              | May 2010       | Updated for RLM System and new process for repayment of approved subordinated debt.  |
| 4.2              | August 2010    | Updated for new ASX company names and rules.   |
| 4.3              | August 2011    | Updated for bank participant reporting and transfer of ASX and ASX 24 capital requirements to ASIC.  |
| 4.4              | January 2012   | Updated for change in core capital requirements for ASXCL General Participants, guidance on authorised signatories form for ASXCLF Participants and inclusion of Appendix 1.   |
| 5.0              | September 2013 | Updated to reflect CM team name change to CRA, bank ADIs as ASXCL participants, OTC Participants, changes to subordinated debt guidance to extend it to ASXCLF participants and reflect new pro forma documentation, reflect joint NTA participants and changes to annual reporting requirements for ASXCLF bank participants. |
| 5.1              | December 2013  | Updated for change in deadline for ASXCLF bank ADIs' submission of annual financial statements.  |
| 5.2              | August 2014    | Updated for General Participants tiered core capital requirements and removal of the use of bank guarantees for core capital purposes.   |
| 5.3              | March 2015     | Updated for changes to authorised signatories and ASD with foreign lenders.  |
| 5.4              | June 2015      | Deleted annual requirement for ASXCL key risks and internal systems statement and ASXCLF directors declaration; updated information under ASXCL other capital regime.  |
| 5.5              | November 2015  | Added information regarding trusts as subordinated debt lenders and updated Appendix 1.  |
| 5.6              | January 2016   | Updated for changes to bank ADI reporting.   |
| 5.7              | June 2016      | Changes to RLM user accounts related to redevelopment of ASX Online and changes to ASD limit for ASXCLF participants.  |

| DOCUMENT VERSION | DATE          | REASON FOR AMENDMENT   |
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| 5.8              | January 2018  | Updated for the new minimum core capital requirements approach, removal of ASXCL NTA requirement details, inclusion of procedures manual requirement for ASXCLF NTA participants and updated ASD guidance.                       |
| 5.9              | July 2018     | Removal of requirement for dual ASXCL/ASXCLF participants to lodge an annual audited NTA return and Form 2 auditors report. Update annual return due date.   |
| 6.0              | January 2019  | Updated for changes to content of NTA returns and change to reporting requirements for ASXCLF OTC Participants that are ADIs.  |
| 6.1              | July 2021     | Updated for change in approach to extensions for ASXCLF auditors reports and to specify acceptable sign-off methods for ASXCL business activities returns and subordinated debt repayment approval request forms.                |
| 6.2              | March 2024    | Updated to remove references to ASXCL NTA requirements, removal of late lodgement fees, updated guidance on the required legal opinion when lender of a subordinated debt facility is a foreign entity, and other minor updates. |
| 6.3              | February 2025 | Updated for amendments to ASXCL risk based capital requirements and to reflect the use of Financial Returns Application to replace RLM system.   |

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## 1. INTRODUCTION

### (a) Purpose

This document provides guidance to entities that are Participants of ASX Clear Pty Limited (ASX Clear) and ASX Clear (Futures) Pty Limited (ASX Clear (Futures)). The document is intended to assist all Participants to understand their obligations in relation to the ASX Clear/ASX Clear (Futures) capital requirements by setting out the procedural aspects to be followed.

While the document focuses on capital requirements, ASX Clear and ASX Clear (Futures) Participants also need to be aware of aspects associated with clearing risk management. These are outlined in section (c) below.

ASX Market Participants that are not also ASX Clear Participants and ASX 24 Participants that are not also ASX Clear (Futures) Participants are not subject to any of the capital or reporting requirements set out in this document. These Participants are instead subject to capital requirements under the ASIC Market Integrity Rules (Capital) 2021.

### (b) Terminology

The term “ASX Clear” has been used to refer to ASX Clear Pty Limited.

The term “ASX Clear (Futures)” has been used to refer to ASX Clear (Futures) Pty Limited.

Participants of both ASX Clear and ASX Clear (Futures) are generally subject to both respective capital regimes.

The term “Participant” throughout this document means an ASX Clear Direct or General Participant as well as an ASX Clear (Futures) Futures or OTC Participant.

### (c) Clearing Risk Oversight (CRO)

ASX Clear and ASX Clear (Futures) are the central counterparties to the respective ASX and ASX24 market transactions and each holds a CS facility licence. Central to their compliance with both their licensee obligations and the RBA Financial Stability Standards is the obligation to manage the counterparty risks arising from their role as central counterparties.

In accordance with the Financial Stability Standards, ASX Clear and ASX Clear (Futures) have comprehensive risk controls in place to provide a high degree of confidence that in the event of extreme volatility, ASX Clear and ASX Clear (Futures) have sufficient financial resources to cover the potential default of two Clearing Participants and their affiliates.

The risk measurement and analysis process enables ASX Clear and ASX Clear (Futures) to assess the adequacy of their financial resources essential to maintaining their CS facility licences. The more understanding ASX Clear and ASX Clear (Futures) management has of the risks associated with their role as CCPs, the more effectively ASX Clear and ASX Clear (Futures) can manage the capital required to maintain their CS facility licences and meet their financial obligations. Management has identified risks to which ASX Clear and ASX Clear (Futures) are subject to under the daily operation of their CS facility licences. These risks form the basis of the risk measurement and reporting function of the CRO unit.

As part of the daily risk management function, CRO performs the following:

**(i) Margin**

CRO will calculate, for each Account of each Clearing Participant, margin and settlement to market amounts for open contracts registered in the name of the Clearing Participant.

CRO will notify each respective Participant of the amounts calculated for total margin obligations for which the Clearing Participant must provide cover within a time notified by CRO.

**(ii) Additional Control Measures**

CRO measures each Clearing Participant's Capital Based Position Limit ratio on a daily basis. CRO monitors each Clearing Participant's margins relative to the Clearing Participant's liquid capital, net tangible asset, or Tier 1 capital figure. Where certain limits are exceeded, Additional Initial Margin (AIM) calls may be made.

CRO measures each Clearing Participant's risk under various scenarios of extreme ("stress") market moves. CRO may determine from time to time, by reference to this stress exposure, limits that a Clearing Participant is permitted to incur. Where limits are exceeded, Additional Initial Margin (AIM) calls may be made.

CRO may limit the open position which a Clearing Participant is permitted to hold.

CRO may also request intraday margin calls from Clearing Participants if intraday volatility is observed.

**(iii) Cover**

In addition to the above, CRO has discretion to request additional cover should it require it. This cover must be provided in the amount, manner and form determined by CRO.

**(iv) Participant Contact**

CRO may contact its Clearing Participants to discuss the risk exposure they have with ASX Clear or ASX Clear (Futures).

**(d) Counterparty Risk Assessment (CRA)**

The CRA unit reviews financial information provided by Participants to monitor their compliance with the relevant capital requirements. Early identification of a Participant in financial difficulty will enable action to be taken including, if necessary, an orderly wind down of the Participant.

The CRA unit is also responsible for developing and monitoring the capital regimes that Clearing Participants must comply with. This includes developing the policy framework and reporting mechanisms designed to ensure that the financial strength of Participants is measured and monitored on a regular basis.

**(e) Participants and Applicable Rules**

ASX Clear Participants are subject to the ASX Clear Operating Rules and the capital requirements are set out in Section 5 and Schedule 1 of those Rules.

ASX Clear (Futures) Participants are subject to the ASX Clear (Futures) Operating Rules which consist of Futures Rules and OTC Rules. The capital requirements are set out in Section 8 of the Futures Rules and Section 3.3 of the OTC Rules.

**If an ASX Clear Participant is also a Participant of ASX Clear (Futures), the Participant must comply with the capital requirements of ASX Clear (Futures) as well as complying with the capital requirements of ASX Clear.**

## (f) Available Capital Regimes

### (i) ASX Clear Participants

Under the ASX Clear Operating Rules, Participants must comply with one of two capital regimes.

- Risk Based Capital Requirements: ASX Clear Operating Rules – refer to ASX Clear Rule 5 and Schedule 1;
- Other Capital Regime: ASX Clear Operating Rules – refer to ASX Clear Rule 5.2.

The capital regime that applies to a Participant will depend on the type of entity it is.

The following is a brief summary of the two available capital regimes.

**Risk Based Capital Requirements** – This approach relies on both the “balance sheet” and prescribed risk measurement techniques as the measure of a Participant’s financial stability. The capital requirements are classified into two distinct components:

- a measure of total regulatory capital – “liquid capital”; and
- a measure of risk in the organisation, which could either be “core requirement” or “total risk requirement”.

A Participant’s liquid capital must at all times be greater than the higher of its core requirement or total risk requirement<sup>1</sup>.

The core requirement for a Participant will be the sum of:

- a base requirement;
- an amount based on client written options clearing;
- an amount based on own account business; and
- an amount based on non-ASX client activity.

For ASX Clear Direct Participants, the base requirement is \$5 million.

For ASX Clear General Participants, the base requirement is the amount shown in the table below based on the number of Market Participants that they clear for:

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<sup>1</sup> For a participant approved as a Dual Capital Participant, its liquid capital must at all times be greater than its total risk requirement. A Dual Capital Participant also needs to ensure its core capital is at all times not less than its core requirement.



| General Participants – Base Requirement |              |   |
|---|--------------|---|
| Tier 1                                  | \$5,000,000  | Clearing for itself <u>or</u> up to one External.   |
| Tier 2                                  | \$10,000,000 | Clearing for: <ul style="list-style-type: none"> <li>• itself and one External, or</li> <li>• two Externals.</li> </ul>                     |
| Tier 3                                  | \$15,000,000 | Clearing for: <ul style="list-style-type: none"> <li>• itself and two Externals, or</li> <li>• three Externals.</li> </ul>                  |
| Tier 4                                  | \$20,000,000 | Clearing for: <ul style="list-style-type: none"> <li>• itself and three or more Externals, or</li> <li>• four or more Externals.</li> </ul> |

*In this table "External" means another Participant or a Market Participant.*

For each of the abovementioned activity categories (client written options clearing, own account business and non-ASX client activity), the additional amount included in the calculation of the Participant's core requirement will be:

- nil if the activity is determined to be de minimis;
- \$2,500,000 if the activity is determined not to be de minimis or material;
- \$5,000,000 if the activity is determined to be material.

Participants will be assessed for each of these categories separately. If, for example, a Participant's activity in each of the three categories is deemed to be material, an additional amount of \$15,000,000 will be included in the calculation of the Participant's core requirement.

**Other Capital Regime** – This approach is only available to a Participant that is an authorised deposit taking institution that has been granted an authority to carry on banking business in Australia under the Banking Act 1959 and that is listed by the Australian Prudential Regulation Authority (APRA) as an "Australian-owned Bank", "Foreign Subsidiary Bank" or "Branch of Foreign Bank". Upon application by the Participant, ASX Clear may be willing to grant an exemption from the ASX Clear capital requirements on the basis that the Participant is subject to the capital requirements and prudential regulation of its banking regulator. This recognition is subject to the conditions set out in ASX Clear Rule 5.2.

## (ii) ASX Clear (Futures) Participants

Under the ASX Clear (Futures) Operating Rules, all Futures Participants and OTC Participants that are not Australian Banks (as defined in the Rules) must comply with the Net Tangible Assets (NTA) Requirements. This approach relies on the "balance sheet" as the measure of a Participant's financial stability and permits ASX Clear (Futures) to restrict open positions to a multiple of NTA.

The minimum NTA for a Futures Participant is \$5 million and for an OTC Participant is \$50 million. (Note however there are increased reporting requirements if the NTA is maintained at these minimum levels).

OTC Participants that are Australian Banks must comply with a Tier 1 capital requirement. This approach relies on the Participant's Tier 1 capital which is calculated in accordance with the definitions and requirements of the Participant's banking regulator.

The minimum Tier 1 capital for an OTC Participant is \$50 million.

An OTC Participant that is also a Futures Participant only needs to comply with the higher of the two capital requirements.

**(g) ASX Contacts**

**(i) Counterparty Risk Assessment**

Telephone: 1800 636 850      Email: CRAteam@asx.com.au

**(ii) Clearing Risk Oversight**

Telephone: 1800 198 021      Email: CROversight@asx.com.au

## 2. GENERAL MONITORING PROCESS

This section briefly describes the monitoring process to be undertaken by ASX Counterparty Risk Assessment (CRA). This process is applied to all Participants that are subject to the Risk Based Capital Requirements and NTA Requirements. Note that CRA is not responsible for the prudential supervision of ASX Clear Participants which are subject to the Other Capital Regime and so does not undertake analysis of the financial information provided by these Participants (see section 5 for further details).

CRA will review and analyse the returns lodged by Participants. This review is exception based. CRA may seek further information from Participants whose returns show, for example, significant changes since the previous returns, significant deterioration in capital position, potential breaches of the capital requirements or possible reporting errors. CRA will continue to seek information until it is satisfied and this may require the Participant to make certain changes. CRA may also seek further information from Participants in order to obtain a better understanding of the Participant's business.

### 3. ASX CLEAR PARTICIPANTS – RISK BASED

This section applies to Participants complying with the Risk Based Capital Requirements.

#### (a) Authorisation

A Participant that is required to comply with the Risk Based Capital Requirements will need to demonstrate to ASX Clear that it has an adequate understanding of ASX Clear Rule S1 and will need to demonstrate its systems for performing the necessary calculations. The process will involve ASX Clear conducting an authorisation review, possibly at the offices of the Participant. The information to be reviewed and the steps involved in the authorisation process will be communicated to the Participant as needed. Once all issues have been addressed satisfactorily, ASX Clear will issue the Participant with an authorisation letter which will include any conditions attached to the authorisation and any other matters that may need further attention.

#### (b) Overview

##### (i) Returns

The Risk Based Capital Requirements have **four** prescribed returns that may require lodgement at various times or under different circumstances and these are noted below:

1. **Ad Hoc Return** – to be lodged by all Participants on an ad hoc, daily or weekly basis if requested by ASX Clear or if the ratio of Liquid Capital to Liquid Capital Requirement (or ratio of Liquid Capital to Total Risk Requirement for a Dual Capital Participant) falls below the specified minimum;
2. **Capital Liquidity Return** – to be lodged by all Participants on a monthly basis;
3. **Annual Audited Return** – to be lodged by all Participants on an annual basis; and
4. **Business Activities Return** – to be lodged by Participants on a quarterly basis.

All returns should contain information of a Participant on a single entity basis, and not on a consolidated group basis.

The purpose of the **Business Activities Return** is for ASX Clear to obtain data on the own account business and non-ASX client activity conducted by Participants to be used as part of the determination of each Participant's Core Requirement.

A Participant that has been determined by ASX Clear to be inactive under ASX Clear Rule S1.2.1(3)(a) and therefore is only subject to the Base Requirement is not required to submit the Business Activities Return.

A Participant that has submitted a Business Activities Return in which it has requested that both its own account business and non-ASX client activity be automatically deemed material will have an additional amount of \$5,000,000 for each of these activities in the calculation of its Core Requirement. Such a Participant is not required to submit further Business Activities Returns on a quarterly basis until such time as it believes that there has been a reduction in the materiality of either of those activities and it wishes to have its Core Requirement assessed by ASX Clear.

##### (ii) Lodgement Format

All Participants are required to prepare and submit their returns electronically using the Financial Returns Application (FRA). This format is mandatory as it enables Counterparty Risk Assessment (CRA) to complete

an analysis of the data received. Please note that this system is designed to enable a Participant to report the required figures, it **does not** calculate the detail that makes up these figures.

Before being able to access FRA, users must first obtain an ASX Online user account and have the relevant FRA role/s assigned to them. FRA is then able to be accessed through ASX Online from any PC that has internet access.

The ASX Online Enterprise Administrator at each Participant is responsible for creating ASX Online user accounts for staff at their firm and assigning the relevant FRA role/s. Details of the Enterprise Administrator/s for each Participant can be confirmed by contacting ASX Customer Technical Support on 1800 663 053 (Australian callers) or +61 2 9227 0372 (international callers) or via email at [cts@asx.com.au](mailto:cts@asx.com.au).

### (iii) Authorisation Requirement

For the **Ad Hoc Return**, **Capital Liquidity Return** and **Business Activities Return**, only one director's authorisation is required. Authorisation is done electronically in FRA.

The **Annual Audited Return** must be authorised by either one director in accordance with a resolution of the board of directors (in which case the date of the resolution must be specified in the return) or by two directors.

## (c) Return Lodgement

### (i) Returns Lodgement Timetable

All Participants must comply with the following lodgement dates. Should any return remain outstanding beyond the due date, disciplinary action may be taken.

| Return  | Due <sup>1</sup>   |
|---|--|
| <b>Ad Hoc Return</b><br>Prescribed under ASX Clear Rule S1.3.1                        | As requested by ASX Clear under Rule S1.3.2  |
| <b>Ad Hoc Return</b><br>Prescribed under ASX Clear Rule S1.2.2(2)(a)                  | Within one Business Day of notifying ASX Clear under the provisions of ASX Clear Rule S1.2.2(1) or Rule S1.2.2(1A)                         |
| Daily Returns – <b>Ad Hoc Return</b><br>Prescribed under ASX Clear Rule S1.2.2(2)(b)  | 10am on each Business Day whilst the provisions of ASX Clear Rule S1.2.2(2)(b)(ii) apply   |
| Weekly Returns – <b>Ad Hoc Return</b><br>Prescribed under ASX Clear Rule S1.2.2(2)(b) | 10am on the Monday, return prepared as at the close of business each Friday, whilst the provisions of ASX Clear Rule S1.2.2(2)(b)(i) apply |
| <b>Capital Liquidity Return</b><br>Prescribed under ASX Clear Rule S1.3.1             | 5.00pm on the 10 <sup>th</sup> Business Day of the month following the reporting month   |

| Return   | Due <sup>1</sup>  |
|--|---|
| <b>Business Activities Return</b><br>Prescribed under ASX Clear Rule S1.3.1                        | 5.00pm on the 15 <sup>th</sup> Business Day of the month following the end of the reporting quarter |
| <b>Annual Audited Return <sup>2</sup></b><br>Prescribed under ASX Clear Rule 4.4.3 and Rule S1.3.1 | Within 3 months of the Participant's financial year end   |

### <sup>1</sup> Due Dates

Due dates are prescribed under ASX Clear Rule S1.3.1(2) and, in the case of the annual audited return, ASX Clear Rule 4.4.3.

### <sup>2</sup> Annual Audited Return

All Participants subject to the Risk Based Capital Requirements should lodge the following documents with CRA:

- i. Electronic copy of the Annual Audited Return submitted via FRA;
- ii. Scanned copy of the independent "Audit Report on Financial Information", dated and signed by the audit firm;
- iii. Scanned copy of statutory accounts, including directors declaration and audit report as required under the laws of the Participant's home jurisdiction; and
- iv. If the Participant is authorised to use the internal models approach of Rule S1, Annexure 3, Part 4, scanned copy of the report from the independent review of the Participant's risk management system (as required under Rule S1, Annexure 3, Part 4, clause 25(b)(viii)).

### (ii) Procedures for Granting Extensions to Returns Lodgement

To ensure that requests for extensions are processed and monitored efficiently, and late returns are accurately determined, ASX Clear requires that Participants observe the following procedures when seeking an extension for the lodgement of returns.

Prior to the due date, an ASX Clear Participant seeking an extension must submit a request via the 'Ask ASX' function in ASX Online. When raising a service request, please complete the fields as follows:

1. Subject of your request: Request for extension to lodgement due date for <insert return type and return date>.
2. Description of your request: Provide the reason for the late lodgement of the return and the revised date for lodgement.
3. Attachments: this is optional.
4. Related service: select "FRA" from the dropdown menu.

Please note that it is unlikely that an extension for a monthly return will be granted for more than two Business Days.

ASX Clear will respond to the Participant via email to approve or refuse the extension. Until such time as the Participant receives this confirmation, **an extension has not been granted**.

Extensions will not be granted by telephone. It is the responsibility of the Participant to ensure it does not assume an extension has been granted until confirmation has been received via email. This procedure will assist both ASX Clear and Participants by creating an audit trail of extensions requested and granted.

ASX Clear will be monitoring closely the frequency for which Participants request extensions for lodgement of returns. ASX Clear will take into account valid reasons for granting extensions and this will only be in respect of isolated and extraordinary circumstances. Further, ASX Clear expects that the Participant has sufficient resources to ensure that returns can be completed at any time, and that the process is not reliant on one employee within the organisation.

(d) [Capital Liquidity Handbook](#)

Participants should also refer to the Capital Liquidity Handbook for guidance on all aspects of compliance with the Risk Based Capital Requirements.

## 4. [DELETED]



## 5. ASX CLEAR PARTICIPANTS – OTHER CAPITAL REGIME

### (a) Introduction

ASX Clear may grant an exemption from its capital requirements under ASX Clear Rule 5.2.1 if a Participant is subject to an acceptable regime of prudential supervision by another regulator. This exemption can be sought by ticking the appropriate box in the application form when seeking to become an ASX Clear Participant.

It should be noted that ASX Clear has no responsibility for the prudential supervision of Participants which have been granted an exemption from the capital requirements. This responsibility rests with the prudential supervisor responsible for the Other Capital Regime. However, ASX Clear may still require financial information from these Participants in order to satisfy itself that the Participant is in compliance with the Other Capital Regime. This also allows ASX Clear to assess its risk exposure and set limits on Participants' open positions.

### (b) Acceptable Regimes

In order to be eligible for an exemption from the capital requirements, a Participant must be an authorised deposit-taking institution (ADI) that has been granted an authority to carry on banking business in Australia under the Banking Act 1959 and must be listed by the Australian Prudential Regulation Authority (APRA) as an "Australian-owned bank", "foreign subsidiary bank" or "branch of foreign bank".

### (c) Notification Requirements

ASX Clear Rule 5.2.7 requires a Participant to provide immediate written notification of any failure by the Participant to comply with the Other Capital Regime. ASX Clear acknowledges that a Participant will be subject to a range of different requirements imposed by the regulator responsible for the Other Capital Regime. The intention of Rule 5.2.7 is not to require notifications of all breaches of that regulator's requirements. The types of matters that ASX Clear expects Participants to notify under Rule 5.2.7 are:

- any breaches or prospective breaches of the minimum capital requirements set by the prudential supervisor; or
- any significant adverse changes in the Participant's financial position that may impact on its ability to continue to satisfy ASX Clear that it has financial resources which are adequate for the performance of its obligations under the ASX Clear Operating Rules.

## 6. ASX CLEAR (FUTURES) PARTICIPANTS – NTA REQUIREMENTS

This section applies to ASX Clear (Futures) Participants (Futures and/or OTC Participants) complying with the NTA Requirements, **other than Participants that are bank ADIs**. Refer to section 7 for guidance on reporting requirements for bank ADIs.

### (a) Authorisation

A Participant that is subject to the NTA Requirements will need to demonstrate to ASX Clear (Futures) that it has an adequate understanding of Futures Rule 8.1 (for Futures Participants) or OTC Rule 3.3 (for OTC Participants). The process will involve ASX Clear (Futures) conducting an authorisation review. The information to be reviewed and the steps involved in the authorisation process will be communicated to the Participant as needed. ASX Counterparty Risk Assessment (CRA) will only give its sign-off once all issues have been addressed satisfactorily.

### (b) Overview

#### (i) Returns

The NTA Requirements have **three** prescribed returns that may require lodgement at various times or under different circumstances and these are noted below:

1. **Ad Hoc NTA Return** – to be lodged by all Participants on an ad hoc basis as requested by ASX Clear (Futures);
2. **NTA Return** – to be lodged by all Participants on a monthly basis; and
3. **Annual Audited NTA Return** – to be lodged by all Participants on an annual basis.

All returns should contain information of a Participant on a single entity basis, and not on a consolidated group basis.

#### (ii) Lodgement Format

All Participants are required to prepare and submit their returns electronically using the Financial Returns Application (FRA). This format is mandatory as it enables CRA to complete an analysis of the data received.

Before being able to access FRA, users must first obtain an ASX Online user account and have the relevant FRA role/s assigned to them. FRA is then able to be accessed through ASX Online from any PC that has internet access.

The ASX Online Enterprise Administrator at each Participant is responsible for creating ASX Online user accounts for staff at their firm and assigning the relevant FRA role/s. Details of the Enterprise Administrator/s for each Participant can be confirmed by contacting ASX Customer Technical Support on 1800 663 053 (Australian callers) or +61 2 9227 0372 (international callers) or via email at: [cts@asx.com.au](mailto:cts@asx.com.au).

### (c) NTA Returns

#### (i) Introduction

A brief commentary on each of the returns is provided below along with a table setting out the sections that need to be completed for each type of return.

**(ii) Adhoc NTA Return**

**(A) General**

The **Ad Hoc NTA Return** summarises the components of the Participant's NTA and also includes reporting of a Participant's available liquidity (cash at bank and credit facilities). This return may be required to be completed on an ad hoc, daily or weekly basis.

**(B) Lodgement and Authorisation Requirements**

The **Ad Hoc NTA Return** must be prepared and submitted electronically using FRA. Authorisation by one director is required to submit the return.

**(iii) NTA Return**

**(A) General**

The **NTA Return** must be submitted on a monthly basis.

Effective 7 February 2018, ASX Clear (Futures) granted all non-ADI Participants that are also participants of ASX Clear a waiver of Futures Rule 8.4 if the Clearing Participant is a Futures Participant and/or OTC Rule 3.3(b)(ii) (only to the extent that the Clearing Participant does not have to submit a monthly NTA return) if the Clearing Participant is an OTC Participant, which exempts these Clearing Participants from having to submit a monthly NTA return. Note: Participants are still required to comply with all other financial and notification requirements under the ASX Clear (Futures) Rules, including the minimum NTA requirement and net liquid assets requirement.

**(B) Lodgement and Authorisation Requirements**

The **NTA Return** must be prepared and submitted electronically using FRA. Authorisation by one director is required to submit the return.

**(iv) Annual Audited NTA Return**

**(A) General**

The **Annual Audited NTA Return** includes most of the sections that are required to be lodged as a **NTA Return** as well as a statement by the Participant's auditors which must be in the form set out in the Procedures to ASX Clear (Futures) Rule 4.14(a).

ASX Clear (Futures) Participants that are also participants of ASX Clear complying with the Risk Based Capital Requirements are not required to submit the Annual Audited NTA Return, and are only required to lodge Form 1 as prescribed under Futures Rule 4.14(a).

**(B) Lodgement and Authorisation Requirements**

Participants of ASX Clear (Futures) only should lodge the following documents with CRA:

- i. Electronic copy of the Annual Audited NTA Return submitted electronically using FRA;
- ii. Scanned copy of the "Annual Audit Certificate" (Form 1 and Form 2), dated and signed by the audit firm; and

- iii. Scanned copy of statutory accounts, including director's declaration and audit report as required under the laws of the Participant's home jurisdiction.

ASX Clear (Futures) Participants that are also participants of ASX Clear need only to lodge a scanned copy of the "Annual Audit Certificate" (Form 1 only), dated and signed by the audit firm.

#### (d) Return Lodgement

##### (i) Returns Lodgement Timetable

All Participants must comply with the following lodgement dates. Should any return remain outstanding beyond the due date, disciplinary action may be taken.

| Return   | Due  |
|--|--|
| <b>Ad hoc emergency returns – Ad Hoc NTA Return</b><br>Prescribed under ASX Clear (Futures) Futures Rule 8.5(b) and/or OTC Rule 3.3(b)(ii)   | As prescribed by ASX Clear (Futures) from time to time       |
| <b>NTA Return</b><br>Prescribed under ASX Clear (Futures) Futures Rule 8.4 and/or OTC Rule 3.3(b)(ii)  | No later than one calendar month after the end of each month |
| <b>Annual Audited NTA Return <sup>1</sup></b><br>Prescribed under ASX Clear (Futures): <ul style="list-style-type: none"> <li>Futures Rule 4.14(a) and</li> <li>Futures Rule 8.5(b) and/or OTC Rule 3.3(b)(ii) (applicable to Participants that are not also Participants of ASX Clear)</li> </ul> | Within 3 months of the Participant's financial year end      |

##### <sup>1</sup> Annual Audited NTA Return

All Participants subject to the NTA Requirements should lodge all the documents with CRA as set out in section 6(c)(iv)(B) above.

##### (ii) Procedures for Granting Extensions to Returns Lodgement

###### (A) All Returns Other Than Annual Audit Certificate

To ensure that requests for extensions are processed and monitored efficiently, and late returns are accurately determined, ASX Clear (Futures) requires that Participants observe the following procedures when seeking an extension for the lodgement of returns.

Prior to the due date, an ASX Clear (Futures) Participant seeking an extension must submit a request via the 'Ask ASX' function in ASX Online. When raising a service request, please complete the fields as follows:

- Subject of your request: Request for extension to lodgement due date for <insert return type and return date>.

2. Description of your request: Provide the reason for the late lodgement of the return and the revised date for lodgement.
3. Attachments: this is optional.
4. Related service: select “FRA” from the dropdown menu.

Please note that it is unlikely that an extension for a monthly return will be granted for more than two Business Days.

ASX Clear (Futures) will respond to the Participant via return email to confirm the receipt of the email and to approve or refuse the extension. Until such time as the Participant receives this confirmation, **an extension has not been granted**.

Extensions will not be granted by telephone. It is the responsibility of the Participant to ensure it does not assume an extension has been granted until confirmation has been received via email. This procedure will assist both ASX Clear (Futures) and Participants by creating an audit trail of extensions requested and granted.

ASX Clear (Futures) will be monitoring closely the frequency for which Participants request extensions for lodgement of returns. ASX Clear (Futures) will take into account valid reasons for granting extensions and this will only be in respect of isolated and extraordinary circumstances. Further, ASX Clear (Futures) expects that the Participant has sufficient resources to ensure that returns can be completed at any time, and that the process is not reliant on one employee within the organisation.

#### **(B) Annual Audit Certificate**

As the due date for the Annual Audit Certificate is specified directly in ASX Clear (Futures) Rule 4.14(a), it is not technically possible for an extension to be granted.

A Participant that considers it will not be able to meet the deadline for submission of the Annual Audit Certificate must send an email to [CRAteam@asx.com.au](mailto:CRAteam@asx.com.au) prior to the due date (ideally at least one week prior). The email must include, at a minimum:

1. reason for the late lodgement of the Annual Audit Certificate, and
2. the revised date for lodgement. It is unlikely that a revised date that is more than one month after the due date will be considered acceptable.

ASX Clear (Futures) will respond, in writing, to the Participant to advise its decision.

If the reason for late lodgment and revised lodgement date are acceptable (while taking account other factors including the considerations mentioned in the previous section), ASX Clear (Futures) will issue a “no action” letter to the Participant. The “no action” letter will confirm ASX Clear (Futures)’ intention to **not** take any action against the Participant for failure to meet the due date specified in ASX Clear (Futures) Rule 4.14(a), conditional on the Annual Audit Certificate being lodged by the revised date specified by ASX Clear (Futures).

### (e) Indicative Timetable of Pages Requiring Completion

| Page Description                           | Ad Hoc NTA Return   | NTA Return       | Annual Audited NTA Return |
|--|---------------------|------------------|---------------------------|
|  | Ad hoc/daily/weekly | Monthly          | Annually                  |
| Return Profile                             | ✓                   | ✓                | ✓                         |
| Ad Hoc NTA Return                          | ✓                   |                  |                           |
| Additional information - liquidity         | ✓                   |                  |                           |
| Income Statement                           |                     | ✓                | ✓                         |
| Balance Sheet Details                      |                     |                  |                           |
| REC-Trade Receivables                      |                     | ✓                | ✓                         |
| CCE-Cash & Cash Equivalents                |                     | ✓                | ✓                         |
| RAP-Related/Associated Party Receivables   |                     | ✓                | ✓                         |
| DEP-Deposits                               |                     | ✓                | ✓                         |
| LEA-Leases                                 |                     | ✓ <sup>(a)</sup> | ✓ <sup>(a)</sup>          |
| OTA-Other Assets                           |                     | ✓                | ✓                         |
| CFB-Credit Facilities And Borrowings       |                     | ✓ <sup>(a)</sup> | ✓ <sup>(a)</sup>          |
| END-Encumbrance Details                    |                     | ✓ <sup>(a)</sup> | ✓ <sup>(a)</sup>          |
| LIC-Legal Proceedings and Insurance Claims |                     | ✓ <sup>(a)</sup> | ✓ <sup>(a)</sup>          |
| CLI-Contingent Liabilities                 |                     | ✓ <sup>(a)</sup> | ✓ <sup>(a)</sup>          |
| CFG-Credit Facilities Granted              |                     | ✓ <sup>(a)</sup> | N/A                       |
| Balance Sheet                              |                     | ✓                | ✓                         |
| Net Tangible Assets                        |                     | ✓                | ✓                         |
| Net Liquid Assets                          |                     | ✓                | ✓                         |
| Additional Comments                        |                     | ✓                | ✓                         |
| Director's Declaration                     |                     | ✓                | ✓                         |
| Annual Audit Certificate – Form 1          |                     | N/A              | ✓                         |
| Annual Audit Certificate – Form 2          |                     | N/A              | ✓ <sup>(b)</sup>          |
| Statutory accounts                         |                     | N/A              | ✓                         |

<sup>(a)</sup> Page will be shown if the Participant answers “Yes” to the relevant question in Return Profile page.

<sup>(b)</sup> Not required from ASX Clear (Futures) Participants that are also participants of ASX Clear.

### (f) Policy and Procedures Manual

ASX Clear (Futures) Operating Rules Guidance Note 1 Admission as a Participant outlines the admission requirements that ASX Clear (Futures) Participants have to continue to satisfy once they have been admitted.

One of the key admission requirements is the requirement to have “adequate resources and processes” to comply with its obligations as a Participant under the ASX Clear (Futures) Operating Rules.

Section 3.5 of the Guidance Note refers to ASX’s expectation that every Participant has documents detailing its key processes for meeting its obligations under the relevant Operating Rules. This includes its processes for complying with the financial requirements under the ASX Clear (Futures) Rules. Therefore, each Participant is expected to have a policy and procedures manual relating to the ASX Clear (Futures) NTA requirements available for review by CRA. The aim of requesting a Participant to prepare such a manual is to have a document in place that would enable the reader to both understand the source of the data for the NTA calculation and to complete such a calculation, or, at a minimum, assist that person to do so.

Whilst the contents of the policy and procedures manual are not mandated, inclusion of the following, at a minimum, is recommended:

1. an overview of the NTA definition (eg, what comprises the NTA, what constitutes excluded assets, how ASD can increase NTA);
2. specification of the minimum NTA requirement applicable to the Participant;
3. procedures for calculating and frequency of calculating NTA;
4. procedures for monitoring that NTA does not fall below the minimum requirement and frequency of this monitoring;
5. reporting requirements<sup>2</sup>;
6. procedures showing how various sources of data necessary to prepare the NTA return are mapped to the NTA return<sup>3</sup>;
7. procedures for notifying ASX Clear (Futures) in the event of NTA falling below 150% of the minimum required amount;
8. procedures for monitoring that net liquid assets are greater than zero at all times;
9. procedures to identify liquid assets and liabilities;
10. sample printouts from any reports/spreadsheets used; and
11. how new staff are trained to understand the NTA requirements.

It is recommended that each Participant reviews its policy and procedures manual on a regular basis, at least annually, to ensure continued relevance and accuracy of the document.

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<sup>2</sup> ASX Clear (Futures) Participants that are also participants of ASX Clear are not required to lodge monthly NTA returns or the annual audited NTA return however they are required to lodge the Form 1 – Independent Auditor’s Report on Net Tangible Assets Rules, as well as the ad hoc NTA return when requested to do so. Such Participants are required to report NTA related information in the capital liquidity returns submitted under the ASX Clear Rules.

<sup>3</sup> For ASX Clear (Futures) Participants that are also participants of ASX Clear, this item would only relate to ad hoc NTA returns.

## 7. ASX CLEAR (FUTURES) PARTICIPANTS – BANK ADIS

This section applies to Participants of ASX Clear (Futures) (Futures and/or OTC Participants) that are bank ADIs.

### (a) Futures Participants

All Futures Participants are subject to minimum NTA requirements. ASX Clear (Futures) Rule 8.4 requires all Futures Participants to lodge a statement of financial position in the prescribed form by no later than one month after the end of the reporting month. The provision of this statement enables ASX Clear (Futures) to monitor compliance with the minimum NTA requirements and provides data that is able to be used for setting capital based position limits.

ASX Clear (Futures) recognises that bank ADIs are subject to the prudential regulation requirements, and in particular the Basel accord capital framework requirements, imposed by the Australian Prudential Regulation Authority (for Australian incorporated banks) or a foreign banking regulator (in the case of foreign banks). Therefore, ASX Clear (Futures) has determined that, rather than requiring bank ADIs to submit monthly NTA returns under Futures Rule 8.4, an alternative regime for bank ADI Participants that relies on data that they are already required to calculate for their banking regulator is appropriate. Notwithstanding this determination, it should be noted that Futures Rules 8.1, 8.2, 8.5 and 8.7 will continue to apply to bank ADI Participants.

The alternative regime is achieved via the granting of an exemption from Futures Rule 8.4 to each affected Participant. The exemption will be subject to the following conditions and any other such conditions as ASX Clear (Futures) considers appropriate:

1. The Clearing Participant must remain an authorised deposit-taking institution (ADI) as defined under section 5 of the Banking Act 1959 (Cth);
2. The Clearing Participant must comply with the minimum capital requirement prescribed by its banking regulator; and
3. The Clearing Participant must notify ASX Clear (Futures) immediately if it becomes aware or has reasonable grounds for suspecting the existence of any event or circumstance which adversely affects or may adversely affect its compliance with the minimum capital requirements set by its banking regulator.

### (b) OTC Participants

Under OTC Rule 3.3(b)(i), OTC Participants are required to lodge with ASX Clear (Futures) the financial information prescribed in the OTC Handbook. No information is currently prescribed for this purpose.

### (c) Futures and OTC Participants

Entities that are both OTC Participants and Futures Participants are required to comply with both Futures Rule 8.4 (including any conditions of the exemption described above) and OTC Rule 3.3(b)(i).



## 8. APPROVED SUBORDINATED DEBT (ASD)

This section applies to ASX Clear and ASX Clear (Futures) Participants that want to use ASD.

This section does not apply to bank ADI Participants since the concept of ASD is not relevant for such Participants.

### (a) Introduction

#### (i) General

These instructions are designed to outline the requirements and procedures for establishing and maintaining an ASD facility under both the Risk Based Capital Requirements and NTA Requirements.

Counterparty Risk Assessment (CRA) has prepared the following pro forma documents that may be used in connection with establishing and utilising an ASD facility and also amending, novating or discharging that facility:

- i. **Subordinated Loan Deed** (refer to (b) below) – note that this replaces the previous Loan Agreement and Subordination Deed that were used to establish ASX Clear ASD facilities prior to March 2012;
- ii. **Notification of Advance** (refer to (c) below);
- iii. **Deed of Discharge** (refer to (e) below);
- iv. **Deed of Novation** (refer to (f) below); and
- v. **Supplemental Deed** (or Supplemental Agreement for ASX Clear facilities established prior to March 2012) (refer to (g) below).

If the Participant is an ASX Clear Participant only, ASX Clear will be a party to the documents. If the Participant is an ASX Clear (Futures) Participant only, ASX Clear (Futures) will be a party to the documents. If the Participant is both an ASX Clear Participant and an ASX Clear (Futures) Participant and wants to have subordinated debt treated as ASD for the purposes of both the ASX Clear and ASX Clear (Futures) Operating Rules, both ASX Clear and ASX Clear (Futures) will be parties to the documents.

Copies of any of these pro forma documents can be obtained by contacting CRA.

In addition, all information and documentation required to be sent to ASX Clear/ASX Clear (Futures) in accordance with these instructions should be forwarded to CRA.

It should be noted that if the proposed lender is a trust then the standard pro forma documentation should not be used. This is because the trustees will have to seek to have their liability limited to the extent to which they are indemnified from the assets of the trust. Additional clauses will need to be incorporated in the Subordinated Loan Deed before it can be provided to the Participant for review.

#### (ii) Dual Subordination

This section is relevant to Participants that are subject to the capital requirements of another supervisory body (e.g. offshore exchange/clearing house or regulator) in addition to ASX Clear's/ASX Clear (Futures)' capital requirements.

If a Participant has subordinated debt which has been approved by another supervisory body, ASX Clear/ASX Clear (Futures) **may** also approve this same subordinated debt as ASD for the purposes of the NTA Requirements or Risk Based Capital Requirements (subject to all other requirements being met). ASX Clear/ASX Clear (Futures) will not, however, necessarily “approve” this subordinated debt just because it has been approved by another supervisory body.

Accordingly, in order for ASX Clear/ASX Clear (Futures) to make this decision a Participant must provide a copy of the subordinated debt documents it has entered into, or is going to enter into, with the other supervisory body and these will be reviewed by ASX Clear/ASX Clear (Futures).

A Participant will need to sign separate documentation with ASX Clear/ASX Clear (Futures) for that subordinated debt facility to be included as ASD for the purposes of the NTA Requirements or Risk Based Capital Requirements. The ASX Clear/ASX Clear (Futures) documentation will operate alongside the other supervisory body’s documentation and the Participant’s subordinated debt documents with the other supervisory body will have no practical impact on the manner in which ASX Clear/ASX Clear (Futures) supervises the Participant’s ASD and capital requirements.

The capital requirements imposed on the Participant by the other supervisory body are distinct from the ASX Clear/ASX Clear (Futures) capital requirements and do not change the Participant’s obligations in respect of the ASX Clear/ASX Clear (Futures) capital requirements.

Approval must be obtained from ASX Clear/ASX Clear (Futures) for all advances and payments of a Participant’s ASD, regardless of whether or not the other supervisory body has given its approval.

### **(iii) Foreign Lenders**

This section is relevant to Participants that intend to have a foreign entity as the lender of the subordinated debt facility.

Where the lender is a foreign entity, the lender’s execution block as shown in the pro forma documents will need to be altered as appropriate for the lender’s country of incorporation.

For all deeds and agreements, the lender will also need to provide a legal opinion, either from its in-house legal counsel or from external legal counsel addressed to ASX Clear/ASX Clear (Futures) opining that the lender:

- (a) has duly executed the particular document in accordance with its constituent documents and the laws of the applicable jurisdiction [note: the legal opinion must specify the jurisdiction. ASX will not accept an opinion that references the term ‘applicable jurisdiction’]; and
- (b) has the power to enter into, and to perform its obligations under the particular document and has taken all necessary action and obtained all consents needed to authorise its entry into and execution, delivery and performance of the document.

The lender must provide a draft legal opinion to ASX Clear/ASX Clear (Futures) for its review prior to finalising and signing the opinion. The Participant and lender will need to allow time for this review to be completed.

However, if the lender is a foreign ADI<sup>4</sup> and is executing the deed or agreement under a power of attorney, then a legal opinion is not required. A certified copy of the power of attorney covering the document being executed will need to be provided instead.

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<sup>4</sup>As defined in the Banking Act 1959

## (b) Establishment of a New ASD Facility

### (i) General

If a Participant wishes to establish a new ASD facility for use in conjunction with the NTA Requirements or Risk Based Capital Requirements, it must complete a Subordinated Loan Deed. As noted above, pro forma documentation is available to assist in this process and is provided by ASX Clear/ASX Clear (Futures) as a guide only. All Participants are advised to seek their own independent legal advice as some clauses in the pro forma documentation may not necessarily be applicable or appropriate in certain circumstances.

A pro forma of the Notification of Advance is included as Schedule 1 of the pro forma Subordinated Loan Deed. **When executing the Subordinated Loan Deed, the pro forma Notification of Advance should not be completed and must be left blank.** Refer to (c) below for guidance on the use of the Notification of Advance as a stand-alone document.

If a Participant requires changes to be made to the pro forma documentation, a draft of the amended pro forma Subordinated Loan Deed, showing the required changes in revision marks, must be provided for CRA's review prior to execution by the Participant or the lender. Accordingly, the Participant will need to allow time for this review to be completed. The more complex the departure from the pro forma documentation, the greater the review time which should be allowed for (for example, assignments of ASD when there is a buy-out etc).

Only after the Participant has been advised that the proposed amendments are acceptable should the Subordinated Loan Deed be signed. Three originals of the Subordinated Loan Deed should be executed by the lender and the Participant (or four originals if it is a joint ASX Clear and ASX Clear (Futures) facility), and then sent to ASX Clear and/or ASX Clear (Futures) for execution. **The lender and the Participant must leave the documents undated.** The documents will be dated by CRA.

Once ASX Clear/ASX Clear (Futures) has executed the documents the three (or four) originals will be returned to the Participant in order for the appropriate stamp duty to be affixed. Once stamped, one original **must be** returned to CRA for its records (or two originals in the case of a joint ASX Clear and ASX Clear (Futures) facility).

### (ii) New Participants

An entity applying for admission as a Participant may want, or need, to establish an ASD facility to assist it to comply with the NTA Requirements or Risk Based Capital Requirements that it will be subject to upon admission. In this situation, the lender and the applicant can execute the Subordinated Loan Deed prior to the applicant having been admitted as a Participant.

Although the documents describe the borrower (applicant) as being a Participant, there is no problem with the lender and the applicant executing the documents prior to admission because the documents do not take effect until they have been executed by **all** parties. ASX Clear/ASX Clear (Futures) will only execute the documents upon (or after) the applicant being admitted as a Participant. Relevant parties should note that while ASX Clear/ASX Clear (Futures) permits entities to execute prior to admission, this should not be taken as a representation that an applicant will in fact be admitted, rather execution is permitted purely for the administrative ease of the applicant. Admission of an applicant will still be subject to the application process.

Three originals of the Subordinated Loan Deed (or four originals if it is a joint ASX Clear and ASX Clear (Futures) facility) should be executed by the lender and the applicant and then sent to ASX Clear and/or ASX Clear (Futures) for execution. **The lender and the applicant must leave the documents undated.** The documents will be dated by CRA.

ASX Clear/ASX Clear (Futures) will not execute the documents until such time as the entity has been admitted as a Participant. Once ASX Clear/ASX Clear (Futures) has executed the documents, the three (or four) originals will be returned to the Participant in order for the appropriate stamp duty to be affixed. Once stamped, one original **must be** returned to CRA for its records (or two originals in the case of a joint ASX Clear and ASX Clear (Futures) facility).

### (iii) Subordinated Debt and Approved Subordinated Debt

It is important that Participants understand the distinction between subordinated debt under a Subordinated Loan Deed/Subordination Deed and Approved Subordinated Debt for the purposes of the ASX Clear and/or ASX Clear (Futures) capital requirements.

#### (A) Subordinated Debt

Subordinated Debt is defined in the pro forma Subordinated Loan Deed as follows:

“Subordinated Debt” means, at any time, the aggregate of:

- (a) the Principal at that time; and
- (b) all other amounts that at that time are owing or contingently owing by the Participant to the Lender under this deed (including interest).

The purpose of this definition is to ensure that **all** amounts owing by the Participant to the lender are subordinated to all other amounts that the Participant may owe to anyone else.

#### (B) Approved Subordinated Debt

##### (1) General

While ASX Clear and/or ASX Clear (Futures) is a party to subordinated debt arrangements, not all amounts subordinated under these arrangements will necessarily be treated by ASX Clear/ASX Clear (Futures) as ASD and therefore be able to be included in Liquid Capital under the Risk Based Capital Requirements or included in NTA under the ASX Clear (Futures) Rules. Subordinated Debt will not be recognised as **ASD** for the purposes of the ASX Clear/ASX Clear (Futures) capital requirements until the amount is notified to and approved by ASX Clear/ASX Clear (Futures) prior to it being drawn down under the subordination arrangement. The use of the terminology “drawn down” implicitly refers only to principal sums.

However, if a Participant wishes to include an interest amount on a principal sum as part of ASD, the Participant must be intending to include that accrued interest as part of the principal amount owing, and hence it must, unless ASX Clear/ASX Clear (Futures) advises otherwise, seek ASX Clear/ASX Clear (Futures) approval.

Accordingly, a Participant must lodge a completed Notification of Advance form in the same manner as it does when it requires a principal sum to be recognised as ASD.

As a practical matter, we would **not** expect that a Participant would need to have ASX Clear/ASX Clear (Futures) approve an “interest amount” as ASD more than once a month.

##### (2) Limits

**The following two paragraphs only apply to Participants subject to the NTA Requirements.**

ASX Clear (Futures) will not approve subordinated debt under the NTA Requirements unless the Participant is sufficiently capitalised. Participants must have at least \$250,000 in paid-up capital before any subordinated debt will be approved.

ASX Clear (Futures) Participants are expected to meet their minimum NTA requirement without the use of ASD. Above that, there is no limit on the amount of subordinated debt that can be approved as ASD (other than the facility limit specified in the Subordinated Loan Deed).

### (c) Notification of Advance

If a Participant intends making an advance under the Subordinated Loan Deed immediately upon execution of the Subordinated Loan Deed, a Notification of Advance form should accompany the Subordinated Loan Deed when sent to ASX Clear/ASX Clear (Futures) for execution. The amount first drawn down under the ASD facility does not have to be the full amount of the facility limit, but can be if the Participant so chooses.

**A pro forma Notification of Advance form is included as Schedule 1 in the Subordinated Loan Deed (or Subordination Deed for ASX Clear facilities established prior to March 2012).** The Notification of Advance needs to be completed as a stand-alone document whenever the Participant seeks to draw down under the ASD facility.

As noted above, all amounts (whether this be a principal sum or an “interest amount”) must be notified to ASX Clear/ASX Clear (Futures) on the Notification of Advance form and approved in writing by ASX Clear and/or ASX Clear (Futures) before the amount may be included in the Participant’s calculation of Liquid Capital (under the Risk Based Capital Requirements) or NTA (under the NTA Requirements) as ASD. Three originals of the Notification of Advance form should be completed and signed by the lender (or four originals if it is a joint ASX Clear and ASX Clear (Futures) facility) (note, it is not required to be signed by the Participant), and then forwarded to ASX Clear and/or ASX Clear (Futures) for execution. Once executed by ASX Clear/ASX Clear (Futures), two originals will be returned to the Participant.

### (d) Approval for Payment of Subordinated Debt and Approved Subordinated Debt

Where a lender requests a subordinated debt amount (whether this is a principal sum or an “interest amount”) to be repaid, ASX Clear/ASX Clear (Futures) will only approve the repayment by the Participant if it is of the opinion that:

- (a) for a Participant subject to the Risk Based Capital Requirements, the ratio of Liquid Capital to Liquid Capital Requirement (or ratio of Liquid Capital to Total Risk Requirement for a Dual Capital Participant) is capable of continuing to be greater than 1.2 on payment; or
- (b) for a Participant subject to the NTA Requirements, its NTA is capable of continuing, on payment, to be greater than 150 per cent of the minimum required.

A Participant must provide a completed Subordinated Debt Repayment Approval Request form which is available on ASX Online. There are two forms tailored for NTA Requirements and Risk Based Capital Requirements respectively and one form for joint Participants. The amount entered in the approval request form needs to reflect the Participant’s position after repayment of subordinated debt and should be reflective of the Participant’s most recent capital and risk figures. The Participant may provide additional comments related to the repayment request for consideration by ASX Clear/ASX Clear (Futures). The repayment request form must be signed by one director. The Subordinated Debt Repayment Approval Request form may be signed using one of the following methods:

- (a) wet signature;

- (b) using an electronic signature platform (such as DocuSign, AdobeSign or HelloSign) provided the relevant audit trail/document history is also provided; or
- (c) copying a scanned or snipped image of a physical signature. If signing using this method, the director must also provide an email confirming either:
  - they affixed their electronic signature to the return; or
  - they authorised another specified person to affix the electronic signature to the return (the specified person must be named).

The signed form must be scanned and emailed to [CRATeam@asx.com.au](mailto:CRATeam@asx.com.au).

The form should be provided within 24 hours of the expected payment date but with sufficient time to allow CRA to review the request. CRA will advise the Participant in writing once the repayment has been approved. The Participant must not make the payment until ASX Clear's and/or ASX Clear (Futures)' approval has been received.

ASX Clear/ASX Clear (Futures) will not withhold its approval for the payment of an amount owing under an approved subordination arrangement if, in the opinion of ASX Clear/ASX Clear (Futures) the payment will not lead to a breach of the Participant's capital based position limit or a reduction in the Participant's stress test exposure limit such that an AIMS call would be triggered and:

- (a) for a Participant subject to the Risk Based Capital Requirements, its Liquid Capital divided by Total Risk Requirement is capable of continuing to be greater than 1.2 on payment; or
- (b) for a Participant subject to the NTA Requirements, its NTA is capable of continuing, on payment, to be greater than 150 per cent of the minimum required and, in the case of a Category 1 Clearing Participant<sup>5</sup>, its NTA remains greater than \$200 million.

In determining whether a Participant is capable of continuing to meet the abovementioned requirements, the following may be considered:

- (a) the level of utilisation of the Participant's capital based position limit and stress test exposure limit;
- (b) the state of the overall market and the trend of the individual Participant's share of that market;
- (c) the ability of the Participant to continue as a going concern for a period that may exceed 30 days;
- (d) any waivers/exemptions that exist at the time of the request; and
- (e) the existence of any outstanding litigation.

CRA will, at all times, place emphasis on the words "capable of continuing" when considering a payment request. For example, in some circumstances, even though a payment would not immediately reduce the ratio below 1.2 (under the Risk Based Capital Requirements) or reduce the Participant's NTA below 150 per cent of the minimum requirement (under the NTA Requirements), ASX Clear/ASX Clear (Futures) may not approve the payment if it is of the opinion that at some point in the foreseeable future, the minimum requirement may be breached.

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<sup>5</sup> As per clause 2 in Schedule 11A of the ASX Clear (Futures) Operating Rules, a Category 1 Clearing Participant has a capital based position limit of \$1.5 billion rather than a limit of 300% of NTA as applicable for a Category 2 Clearing Participant.



### (e) Deed of Discharge

The Deed of Discharge should be used when a Participant intends cancelling the ASD facility after paying all amounts outstanding under the Subordinated Loan Deed or Loan Agreement.

As noted above, the payment of subordinated debt will not be approved unless ASX Clear/ASX Clear (Futures) is satisfied that following the proposed payment, the Participant shall be capable of continuing to comply with the relevant Operating Rules. Before the discharge of the subordinated debt will be approved, a Participant is required to provide a completed Subordinated Debt Repayment Approval Request form which is available on ASX Online. There are two forms tailored for NTA Requirements and Risk Based Capital Requirements respectively and one form for joint Participants. The amount entered in the approval request form needs to reflect the Participant's position after repayment of subordinated debt and should be reflective of the Participant's most recent capital and risk figures. The Participant may provide additional comments related to the repayment request for consideration by ASX Clear/ASX Clear (Futures). The repayment request form must be signed by one director. The signed form must be scanned and emailed to [CRAteam@asx.com.au](mailto:CRAteam@asx.com.au).

If a Participant requires changes to be made to the pro forma Deed of Discharge, a draft of the amended Deed of Discharge, showing the required changes in revision marks, must be provided for CRA's review prior to execution by the Participant or the lender. Accordingly, the Participant will need to allow time for this review to be completed. The more complex the departure from the pro forma documentation, the greater the review time which should be allowed for.

Only after the Participant has been advised that the proposed amendments are acceptable should the Deed of Discharge be signed. Three originals of the Deed of Discharge should be executed by the lender and the Participant (or four originals if it is a joint ASX Clear and ASX Clear (Futures) facility) and then sent to ASX Clear and/or ASX Clear (Futures) for execution. **The lender and the Participant must leave the documents undated.** The documents will be dated by CRA.

Once ASX Clear/ASX Clear (Futures) has executed the documents, the three (or four) originals will be returned to the Participant in order for the appropriate stamp duty to be affixed. Once stamped, one original **must be** returned to CRA for its records (or two originals in the case of a joint ASX Clear and ASX Clear (Futures) facility).

### (f) Deed of Novation

The Deed of Novation may be used when a Participant wants to keep the ASD facility but wants to replace the current lender with a new lender. (An alternative to this would be to discharge the original ASD facility and establish a new ASD facility with the new lender.)

If a Participant requires changes to be made to the pro forma documentation, a draft of the amended Deed of Novation, showing the required changes in revision marks, must be provided for CRA's review prior to execution by the Participant, the current lender or the new lender. Accordingly, the Participant will need to allow time for this review to be completed. The more complex the departure from the pro forma documentation, the greater the review time which should be allowed for.

Only after the Participant has been advised that the proposed amendments are acceptable should the Deed of Novation be signed. Four originals of the Deed of Novation should be executed by the current lender, the Participant and the new lender (or five originals if it is a joint ASX Clear and ASX Clear (Futures) facility) and then sent to ASX Clear and/or ASX Clear (Futures) for execution. **The lenders and the Participant must leave the documents undated.** The documents will be dated by CRA.

Once ASX Clear/ASX Clear (Futures) has executed the documents, the four (or five) originals will be returned to the Participant in order for the appropriate stamp duty to be affixed. Once stamped, one original **must be** returned to CRA for its records (or two originals in the case of a joint ASX Clear and ASX Clear (Futures) facility).

#### (g) Supplemental Deed/Supplemental Agreement

The Supplemental Deed may be used when a Participant requires an amendment to the Subordinated Loan Deed, for example, an amendment to the facility limit (that is, the amount of ASD that can be advanced as documented in the Subordinated Loan Deed). Note for ASX Clear ASD facilities established prior to March 2012 a Supplemental Agreement applies instead in order to amend the Loan Agreement.

If a Participant requires changes to be made to the pro forma documentation, a draft of the amended Supplemental Deed/Agreement, showing the required changes in revision marks, must be provided for CRA's review prior to execution by the Participant or the lender. Accordingly, the Participant will need to allow time for this review to be completed. The more complex the departure from the pro forma documentation, the greater the review time which should be allowed for.

Only after the Participant has been advised that the proposed amendments are acceptable should the Supplemental Deed/Agreement be signed. Three originals of the Supplemental Deed/Agreement should be executed by the lender and the Participant (or four originals if it is a joint ASX Clear and ASX Clear (Futures) facility) and then sent to ASX Clear and/or ASX Clear (Futures) for execution. **The lender and the Participant must leave the documents undated.** The documents will be dated by CRA.

Once ASX Clear/ASX Clear (Futures) has executed the documents the three (or four) originals will be returned to the Participant in order for the appropriate stamp duty to be affixed. Once stamped, one original **must be** returned to CRA for its records (or two originals in the case of a joint ASX Clear and ASX Clear (Futures) facility).

#### (h) Subsequent Variations

ASX Clear/ASX Clear (Futures) must approve any subsequent variations to the ASD documentation. Accordingly, all variations should be reviewed by ASX Clear/ASX Clear (Futures) prior to the lender and the Participant signing the documentation.

Once approval is given to the draft amendments three originals should be signed by the lender and the Participant (or four originals if it is a joint ASX Clear and ASX Clear (Futures) facility) and forwarded to ASX Clear and/or ASX Clear (Futures) for execution. **The lender and the Participant must leave the documents undated.** The documents will be dated by CRA.

Once ASX Clear/ASX Clear (Futures) has executed the documents, the three (or four) originals will be returned to the Participant in order for the appropriate stamp duty to be affixed. Once stamped, one original **must be** returned to CRA for its records (or two originals in the case of a joint ASX Clear and ASX Clear (Futures) facility).