

# DEFAULT MANAGEMENT OPERATING RULE ENHANCEMENTS

## ASX CLEAR OPERATING RULES

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### SECTION 1 INTRODUCTION AND GENERAL RULES

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#### 1.8 DISCLOSURE OF INFORMATION

##### 1.8.1 Disclosure of information regarding Participants

ASX Clear may, where it considers it appropriate in accordance with Rule 1.15, disclose information regarding its Participants and their activities that are relevant to ASX Clear to:

- (a) the Commission;
- (b) the Reserve Bank of Australia;
- (c) the Australian Prudential Regulation Authority;
- (d) an Approved Market Operator;
- (e) an Approved Settlement Facility; ~~and~~
- (f) any governmental agency or regulatory authority; ~~and~~
- (g) any clearing house, clearing and settlement facility or payments system (in Australia or elsewhere) in which a Participant is a member, for the purpose of assisting ASX Clear or that clearing house, settlement facility or payments system to monitor the Participant's compliance or capacity to comply with its obligations or to manage a default by that Participant.

##### 1.8.2 ASX Clear may disclose information

ASX Clear will take all reasonable measures to protect from unauthorised use or disclosure information provided to ASX Clear in confidence by or on behalf of a Participant pursuant to the Rules. For the purposes of this Rule the disclosure of information in the following circumstances does not constitute unauthorised use or disclosure:

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- (g) to any governmental agency or regulatory authority including, without limitation, an exchange (including, without limitation, an Approved Market

Operator), market, clearing house or clearing and settlement facility (in Australia or elsewhere) which requests ASX Clear to provide the information to it, in the proper exercise of its powers relating to:

- (i) the order and good government of Participants; or
  - (ii) the efficient, honest, fair, competitive and informed trading, clearing and settlement of derivatives or securities (in Australia or elsewhere); ~~and~~
- (h) to any entity which provides financial backing or insurance to ASX Clear for the purpose of enabling that entity to assess the risk to ASX Clear or that entity from clearing activities generally or to assess any claim made in connection with the Participant's activities; ~~and~~
- (i) to any clearing house, clearing and settlement facility or payments system (in Australia or elsewhere), whether or not pursuant to a Reciprocal Arrangement for the purpose of assisting ASX Clear or that clearing house or clearing and settlement facility or payments system to monitor the Participant's compliance or capacity to comply with its obligations or to manage a default by that Participant.

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## 1.20 TIME FOR PERFORMANCE OF OBLIGATIONS

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### 1.20.2 Request to extend operating hours

A request by a Participant to extend operating hours, cut-off times, dead-lines or other closing times prescribed under these Rules or the ASX Clear Operating Rule Procedures is to be made to ASX Clear by such method as notified by ASX Clear from time to time. An extension may be granted by ASX Clear in exceptional circumstances and will require individual justification. Any extension will be granted for the duration specified by ASX Clear.

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## SECTION 2 DEFINITIONS AND INTERPRETATION

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### 2.10 DEFINITIONS AND INTERPRETATION

#### 2.10.1 Definitions used in the Rules

In these Rules and in the Procedures, unless the context otherwise requires:

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“**Initial Margin**” means an amount of money determined by ASX Clear as the initial margin for a ~~Derivatives~~Futures CCP Contract.

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## SECTION 15      DEFAULT

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### 15.1      EVENTS OF DEFAULT

#### 15.1.1      Events of default by Participant

ASX Clear may regard any of the following events as an event of default by a Participant:

- (a) ASX Clear restricts the Participant from accessing the Clearing System;
- (b) the Participant fails to pay any amount due and payable to ASX Clear (under these Rules or otherwise);
- (c) the Participant fails to perform any of its obligations to ASX Clear (under these Rules or otherwise);
- (d) the Participant fails to comply with any reasonable direction, decision or requirement of ASX Clear (under these Rules or otherwise);
- (da) the Participant has failed to comply with a determination made by an Old Tribunal (as defined in Rule 19.20) pursuant to the Old Australian Securities Exchange Disciplinary Processes and Appeals Rulebook (as defined in Rule 19.20);
- (db) the Participant fails to comply with any action taken by ASX Clear in accordance with Rule 19.3.1 or the provisions of the ASX Enforcement and Appeals Rulebook (including as may be affirmed or varied by the Appeal Tribunal (as the case may be following an appeal against such action) pursuant to the ASX Enforcement and Appeals Rulebook;
- (e) without limiting Rules 15.1(b),(c), (d), (da) or (db), any failure by a Participant which is a Seller in respect of a Deliverable Derivatives CCP Contract to perform its settlement obligations on settlement of that contract or to take all steps required to put itself in the position to comply with its settlement obligations;
- (f) the Participant indicates that it will or may suspend payment to ASX Clear or to creditors;
- (g) the Participant is or states that it is, or reasonably suspects that it may be, insolvent, or ceases or indicates that it will or may cease to carry on business;
- (h) the Participant becomes, the Participant or any other person takes any step which might result in the Participant becoming, or the Participant reasonably suspects that it may become a ~~Chapter 5 body corporate~~ ~~externally administered body corporate~~ as defined in section 9 of the Corporations Act;

- (i) someone takes control of the Participant's property for the benefit of the Participant's creditors because the Participant is, or is likely to become, insolvent;
- (j) an insolvent under administration, or any other person takes any step which might result in any partner becoming an insolvent under administration;
- (k) any distress, execution or other process is levied or enforced or served upon or against any property of the Participant;
- (l) an investigator, inspector or other officer is appointed, or an investigation directed or commenced under the Corporations Act or other legislation to investigate all or part of the affairs of the Participant or a related entity, in circumstances which are, in the opinion of ASX Clear, material to the capacity of the Participant to meet its obligations to ASX Clear;
- (m) a Participant does not have the level of capital required under Section 5;
- (n) a Participant no longer satisfies the Admission Requirements or fails to comply with any condition of admission;
- (o) a Participant made a wilful omission or misstatement in respect of a material matter prior to, or in connection with, its application for admission;
- (p) a Participant or any of its Employees is the subject of any regulatory or disciplinary action by any body;
- (q) a Participant has failed to comply with Rule 19.1;
- (r) the Participant or a Related Body Corporate of the Participant is suspended, expelled or terminated as a member or participant of, or subject to any sanction imposed by, or declared in default or non-compliance under the rules of, ASX Clear, an Approved Market Operator, an Approved Settlement Facility, any Australian or overseas derivatives, securities, commodity or stock exchange or market or any other clearing and settlement facility or is subject to any sanction imposed by an Australian or overseas regulatory authority or the Participant ceases to be entitled to carry on business;
- (s) upon request by ASX Clear, which may be made at any time, the Participant fails to confirm on or before the cut-off time reasonably specified by ASX Clear in its request that it is able to pay its debts as they become due and payable.

## 15.2 POWERS OF ASX CLEAR ON DEFAULT

### 15.2.1 ASX Clear may take action

If ASX Clear considers that an event of default under Rule 15.1 has occurred, or if Rule 15.3 applies, ASX Clear may take any or all of the following actions in respect of the Participant, in the name of (if appropriate) and at the expense of the Participant, in any order but subject to Rule 15.4, immediately or at any other time

ASX Clear determines, and without the need for any prior notice to or consent of the Participant or any other person:

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- (e) close out Derivatives CCP Contracts which the Participant is entitled under Rule 13.2.1 to close out. For this purpose and for the purposes of Rule 13.2.1, the Participant is taken to be entitled to close out opposite Derivatives CCP Contracts that are registered in different Accounts (including House and Client Accounts) of a Participant in default. The price attributable to the close out of any Derivatives CCP Contract is to be determined by ASX Clear in its discretion provided that the price is fair and equitable as between Derivatives CCP Contracts regardless of the Account in which they were registered and whether they were closed out on- or off-market. Without limitation, if any two Participants are in default and hold Derivatives CCP Contracts that ASX Clear determines to be opposite positions, ASX Clear shall in its absolute discretion have the power to close out these Derivatives CCP Contracts by the matching of these opposite positions. The price attributable to the close out of such Derivatives CCP Contracts is to be determined by ASX Clear in its discretion;

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## SECTION 19 COMPLIANCE, ENFORCEMENT ACTIONS AND APPEALS

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### 19.5.1 Suspension

If ASX Clear suspends a Participant's authority to clear all or any category of Market Transaction under Rule 15.2.1(l):

- (a) ~~the initial period of suspension must not exceed one month although ASX Clear may extend that period for additional periods of not more than one month at a time if it reasonably believes an extension is necessary or desirable;~~ the period of suspension will be the period that ASX Clear considers necessary or desirable. ASX Clear may extend the period of suspension if it considers an extension is necessary or desirable;
- (b) the Participant must not hold itself out as a Participant ~~in any relevant respect~~ during a period of suspension; and
- (c) during a period of suspension, ASX Clear may, pursuant to its powers under Rule 15.2.1 ~~but subject to Rule 19.5.2~~, terminate the admission of the Participant.

### ~~19.5.2 No termination without hearing~~

~~ASX Clear must not terminate the admission of a Participant under Section 15 (other than under Rule 15.1 (a), (f), (g), (j), (k) or (l)) unless ASX Clear first gives the Participant an opportunity to do one or both of the following, at the option of the Participant:~~

- ~~(a) appear in person or be represented before ASX Clear; and~~
- ~~(b) lodge with ASX Clear a written submission for consideration by ASX Clear, in relation to the proposed termination.~~

~~ASX Clear must determine the matter without bias and must give the Participant a fair hearing and otherwise observe the rules of procedural fairness.~~

# ASX SETTLEMENT OPERATING RULES

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## SECTION 1 INTRODUCTION AND GENERAL RULES

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### 1.12 TIME FOR PERFORMANCE OF OBLIGATIONS

#### 1.12.1 Request to extend operating hours

A request by a Participant, RTGS Payment Provider or Issuer to extend operating hours, cut-off times, dead-lines or other closing times prescribed under these Rules or the ASX Settlement Procedures is to be made to ASX Settlement by such method as notified by ASX Settlement from time to time. Extensions may be granted by ASX Settlement in exceptional circumstances and will require individual justifications. Any extension will be granted for the duration specified by ASX Settlement.

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## SECTION 12 COMPLIANCE, ENFORCEMENT ACTIONS AND APPEALS

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### 12.18 NOTICE OF NON COMPLIANCE

#### 12.18.1 Notice by Participant

A Participant must give Notice of non-Compliance to ASX Settlement immediately upon the happening of any of the following Events of Non-Compliance:

- (a) the Participant ceases to comply with any Participation Requirement that applies to the Participant and has not been waived under Rule 4.2.3;
- (b) the Participant reasonably suspects that the Payments Provider that provides a Payment Facility for the participant will or may not authorise a net payment obligation under Section 10 of these Rules;
- (c) the Participant or any of its Employees is the subject of any regulatory, disciplinary or enforcement action by any market licensee, another clearing and settlement facility, the Commission or any other regulatory authority that relates in any way to its activities as a Participant;

- (d) the Participant:
- (i) takes a step; or
  - (ii) becomes aware that another person has taken a step,
- that may in any way affect the ability or entitlement of ASX Settlement to obtain payment of the relevant amount under the Performance Bond lodged by the Participant;

- (e) if the Participant is a body:
- (i) that body becomes a ~~Chapter 5<sup>n</sup> externally administered~~ body corporate as defined in section 9 of the Corporations Act;
  - (ii) that body reasonably suspects that it may become a ~~Chapter 5<sup>n</sup> externally administered~~ body corporate as defined in section 9 of the Corporations Act;
  - (iii) that body takes a step or becomes aware that another person has taken a step that is intended to lead to the body becoming externally administered; ~~or~~
  - (iv) someone takes control of the body's property for the benefit of the body's creditors because the body is, or is likely to become, insolvent;

*Note: this sub-Rule 12.18.1(e) is intended to cover the definition of external administration in the Payment Systems and Netting Act.*

- (f) if the Participant is an individual or consists of two or more partners or trustees:
- (i) the individual or partner or a trustee becomes an insolvent under administration;
  - (ii) the individual or partner or a trustee reasonably suspects that it may become an insolvent under administration;
  - (iii) the individual or a partner or a trustee takes a step or becomes aware that another person has taken a step that is intended to lead to the individual or the partner or trustee, as the case requires, becoming an insolvent under administration; ~~or~~
  - (iv) someone takes control of the property of that individual, partner or trustee for the benefit of creditors because the individual, partner or trustee is, or is likely to become, insolvent;

*Note: this sub-Rule 12.18.1(f) is intended to cover the definition of external administration in the Payment Systems and Netting Act.*

- (g) if the Payments Provider that provides a Payment Facility for the Participant becomes an externally administered body corporate or an insolvent under administration;



- (h) if the Participant reasonably suspects that the Payments Provider that provides a Payment Facility for the Participant may become an externally administered body corporate or an insolvent under administration;
- (i) in the case of a Participant who is a participant of an Approved Market Operator or Approved Clearing Facility, in addition to the Events of Non-Compliance in Rule 12.18.1(a),(b),(c),(d),(e),(f), (g) and (h):
  - (i) that Participant ceases to be a participant of the relevant Approved Market Operator or Approved Clearing Facility;
  - (ii) that Participant ceases to be entitled to carry on business as a participant of the relevant Approved Market Operator or Approved Clearing Facility;
  - (iii) that Participant is suspended from all or any of the privileges in relation to being a participant of the relevant Approved Market Operator or Approved Clearing Facility;
  - (iv) that Participant is prohibited from transacting any business with or through any participant of the relevant Approved Market Operator or Approved Clearing Facility on such terms and conditions as that Approved Market Operator or Approved Clearing Facility imposes;
- (j) if the Participant becomes aware that it has breached any of the Rules or the Procedures and that breach is significant;
- (k) the Participant suspects or becomes aware of any Employee has engaged in fraudulent conduct; or
- (l) the Participant becomes aware of any other event or circumstance which adversely affects or may adversely affect its financial position or solvency or its ability to comply with the Rules or the Procedures.

Introduced 11/03/04 Origin SCH 19.1.1 Amended 30/06/06, 01/08/10, 02/08/13

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## 12.19 RESTRICTION, ~~OR~~ SUSPENSION OR TERMINATION OF PARTICIPATION

## 12.19 RESTRICTION, ~~OR~~ SUSPENSION OR TERMINATION OF PARTICIPATION

### 12.19.1 ASX Settlement may suspend, terminate or impose restrictions on participation

If ASX Settlement is satisfied that:

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ASX Settlement may:

- (j) impose Restrictions on;
- (k) suspend ~~for a period determined in accordance with Rule 12.19.2;~~ or

- (l) terminate,

the participation of that Participant. The Participant must not hold itself out as a Participant during a period of suspension or if the participation of the Participant has been terminated.

### 12.19.2 Period of suspension

~~A period of suspension under Rule 12.19.1~~  
If ASX Settlement suspends the participation of a Participant under Rule 12.19.1, the period of suspension will be the period that ASX Settlement considers necessary or desirable. ASX Settlement may extend the period of suspension if it considers an extension is necessary or desirable.:

~~(a) must not be more than 30 Business Days; and~~

~~(b) may be extended or further extended by ASX Settlement for no more than 30 Business Days on each occasion, if, before the expiration of a period of suspension, or an extension of that period under this Rule 12.19.2(b):~~

~~(c) \_\_\_\_\_ the non-compliant Participant makes a written request to ASX Settlement for an extension (or further extension) of the period of suspension; or~~

~~(d) \_\_\_\_\_ ASX Settlement reasonably believes that an extension (or further extension) of the period of suspension is necessary or desirable.~~

### 12.19.3 Notice of Restriction, Suspension or Termination of Participation

If ASX Settlement:

- (a) imposes Restrictions on the participation of a ~~non-compliant~~ Participant under Rule 12.19.1(~~ej~~); or
- (b) suspends or terminates the participation of a ~~non-compliant~~ Participant under Rule 12.19.1(~~dk~~) or (~~el~~),

ASX Settlement must promptly give Notice of the Restrictions, suspension or termination, as the case requires, to:

- (c) the ~~non-compliant~~ Participant;
- (d) if the ~~non-compliant~~ Participant is a Clearing Participant, the Approved Clearing Facility;
- (e) if the ~~non-compliant~~ Participant is a Market Participant of ASX, ASX and SEGC; and
- (f) if the ~~non-compliant~~ Participant is a participant of an Approved Market Operator other than ASX, that Approved Market Operator.

### 12.19.4 Further Notices by ASX Settlement

If a Notice is given under Rule 12.19.3:

- (a) ASX Settlement may also, to the extent that it thinks reasonably necessary, give Notice of the Restrictions, suspension or termination, as

the case requires, to other Participants, Issuers or Third Party Providers;  
and

- (b) ASX Settlement may also give Notice or Publish a Notice of the Restrictions, suspension or termination, as the case requires, to the Participant Sponsored Holders (“Holders”) of the ~~non-compliant~~ Participant, informing them of their rights under Rule 12.19.10.

Introduced 11/03/04 Origin SCH 19.3.2, 19.3.3

#### **12.19.5 Content of Notices**

A Notice given under Rule 12.19.3 must contain the matters specified in the Procedures.

Introduced 11/03/04

#### **12.19.6 Time for giving Notice**

Subject to Rule 12.21.4, a Notice given under Rule 12.19.3 may specify that the Restrictions, suspension or termination, as the case requires, will take effect immediately upon receipt of the Notice.

ASX Settlement:

- (a) may give a Notice of termination or a Notice of Restriction during a period of suspension of participation of a ~~non-compliant~~ Participant;
- (b) in a Notice of termination, must give at least 20 Business Days’ Notice before the date by which CHESS Holdings under the control of the ~~non-compliant~~ Participant must be removed from the CHESS Subregister or removed from the control of the ~~non-compliant~~ Participant.

Introduced 11/03/04 Origin SCH 19.3.7, 19.3.8, 19.3.9 Amended 18/12/06

#### **12.19.7 Effects of Restriction on Participation**

If ASX Settlement imposes a Restriction on the participation of a ~~non-compliant~~ Participant, ASX Settlement must reject any Message sent by the Participant in breach of the Restriction.

Introduced 11/03/04 Origin SCH 19.4.1

#### **12.19.8 Effects of Suspension on Participation**

If ASX Settlement suspends the participation of a ~~non-compliant~~ Participant, subject to Rules 12.19.9 and 12.19.10 and, in the case of suspension of an Instruction from Real Time Gross Settlement pursuant to Rule 12.19.8(c), subject to Section 11, ASX Settlement must:

- (a) reject any Message initiated by the ~~non-compliant~~ Participant or another Participant that refers to a CHESS Holding under the control of the ~~non-suspended compliant~~ Participant;
- (b) reject any Message initiated by the ~~non-compliant~~ Participant to establish a new Participant Sponsored Holding;

- (c) suspend from Batch Settlement or Real Time Gross Settlement, as the case may be, any Instruction that is outstanding at the time of the suspension; and
- (d) cancel any Dual Entry Message Transmitted by the Participant that has not been Matched at the time of the suspension.

*Note: Refer to Rule 11.17.7 in relation to RTGS Instructions the funds transfer details of which are held in the RTGS system queue, which ASX Settlement may not be able to recall or inactivate.*

Introduced 11/03/04 Origin SCH 19.5.1

#### **12.19.9 Action taken by ASX Settlement in its discretion**

If a Participant is suspended from participation, ASX Settlement may in its discretion accept and process Messages or Instructions for the purpose of:

- (a) completing transactions which are outstanding when the suspension commenced; or
- (b) removing CHESSE Holdings under the control of the Participant from the CHESSE Subregister or from the control of that Participant.

Introduced 11/03/04 Origin SCH 19.5.2

#### **12.19.10 Action by ASX Settlement if Holder requests removal**

If a Participant is suspended from participation and the Holder of a CHESSE Holding under the control of the Participant gives Notice to ASX Settlement requesting that the Holding be removed from the CHESSE Subregister or from the control of the Participant, ASX Settlement may, upon giving Notice to the Participant of its intention to do so:

- (a) Convert the CHESSE Holding to a Issuer Sponsored Holding; or
- (b) effect a change of Controlling Participant for the Holding,

as ASX Settlement thinks fit in the circumstances.

Introduced 11/03/04 Origin SCH 19.5.3

#### **12.19.11 Action by ASX Settlement if Holder does not request removal**

If a Participant is suspended from participation and the Holder of a CHESSE Holding under the control of the Participant does not give Notice to ASX Settlement requesting that the Holding be removed from the CHESSE Subregister or from the control of the Participant in accordance with Rule 12.19.10, ASX Settlement may:

- (a) upon giving Notice to the Participant and giving Notice or Publishing a Notice on at least two occasions to the Holder of its intention to do so, nominate a Participant for the purpose of this Rule and effect a change of Controlling Participant for the Holding; or
- (b) upon giving Notice or Publishing a Notice on at least two occasions to the Holder of its intention to do so, convert the CHESSE Holding to an Issuer Sponsored Holding.

Introduced 11/03/04 Origin SCH 19.5.4

#### 12.19.12 **Removal of Suspension upon termination**

If ASX Settlement gives Notice of termination to a ~~non-compliant~~ Participant under Rule 12.19.6 during a period of suspension, the suspension is removed with effect from the effective date of termination specified in that Notice.

Introduced 11/03/04 Origin SCH 19.6.1

#### 12.19.13 **Removal of suspension or Restriction in other circumstances**

If ASX Settlement is satisfied that the circumstances that gave rise to the imposition of a Restriction or a suspension no longer exist, ASX Settlement must remove the Restriction or the suspension as the case requires.

Introduced 11/03/04 Origin SCH 19.6.2

#### 12.19.14 **Notice of removal of suspension or restriction**

If ASX Settlement or a Tribunal, as the case requires, removes a Restriction or a suspension under Rule 12.19.13 or ~~Rule 12.21.3~~under the ASX Enforcement and Appeals Rulebook, ASX Settlement:

- (a) must promptly give Notice of the removal to:
  - (i) the ~~non-compliant~~ Participant;
  - (ii) if the ~~non-compliant~~ Participant is a Clearing Participant, the Approved Clearing Facility;
  - (iii) if the ~~non-compliant~~ Participant is a Market Participant of ASX, ASX and SEGC; and
  - (iv) if the ~~non-compliant~~ Participant is a Participant of an Approved Market Operator other than ASX, that Approved Market Operator;
- (b) must also give Notice or Publish a Notice on at least two occasions of the removal to each Facility User who was given Notice of the Restriction or suspension; and
- (c) may give Notice or Publish a Notice on at least two occasions of the removal to other Facility Users.

Introduced 11/03/04 Origin SCH 19.6.3, 19.6.4 Amended 27/06/11

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## 12.21 **APPEAL AGAINST RESTRICTION, SUSPENSION OR TERMINATION OF PARTICIPATION**

### 12.21.1 **Appeal by non-compliant Participant - ~~[Deleted]~~**

~~A non-compliant Participant may appeal against a decision of ASX Settlement under Rule 12.19.1 unless:~~

- ~~(a) the non-compliance is in respect of a prohibition or restriction imposed by a State Revenue Authority against the Participant paying stamp duty by lodgement of a periodic return;~~
- ~~(b) in the case of a General Settlement Participant, the Settlement Participant no longer complies with the capacity requirements specified in Rule 4.10;~~
- ~~(c) in the case of a Settlement Participant which is a Foreign Clearing House:
  - ~~(i) the Settlement Participant no longer complies with the requirement to be appropriately authorised to provide clearing services in the foreign country in which its principal place of business is located; or~~
  - ~~(ii) any necessary regulatory approval granted to the Settlement Participant to allow the Settlement Participant to provide services as a Participant have been withdrawn,~~~~

~~in accordance with the provisions of the ASX Enforcement and Appeals Rulebook.~~

~~Introduced 11/03/04 Origin SCH 19.8.1 Amended 31/03/08, 01/08/10~~

#### **12.21.2 Convening the Appeal Tribunal – [Deleted]**

~~Introduced 11/03/04 Origin SCH 19.8.2 Deleted 31/03/08~~

#### **12.21.3 Decision of Appeal Tribunal – [Deleted]**

~~Introduced 11/03/04 Origin SCH 19.8.3 Deleted 31/03/08~~

#### **12.21.4 Deferral of ASX Settlement decision**

If a non-compliant Participant may appeal a decision of ASX Settlement made under Rule 12.19.1 in accordance with the provisions of the ASX Enforcement and Appeals Rulebook, then subject to Rule 12.5.2, the decision will not take effect until:

- (a) if an appeal is lodged in accordance with Rule 12.21.1, the appeal is determined; or
- (b) otherwise, the expiry of the time allowed for appeal.

~~Introduced 11/03/04 Origin SCH 19.8.4 Amended 01/08/10~~

#### **12.21.5 Partners or trustees of non-compliant Participant**

If:

- (a) a non-compliant Participant consists of two or more partners or trustees; and
- (b) the remaining partners or trustees, as the case requires, demonstrate to the satisfaction of ASX Settlement that, notwithstanding the non-compliance of one of the partners or trustees of the Participant, the remaining partners or trustees as an entity are able to meet the Participation Requirements,

ASX Settlement may remove the restriction, condition or suspension or revoke the termination of participation of the non-compliant Participant on such terms as ASX Settlement considers reasonable in the circumstances.

Introduced 11/03/04 Origin SCH 19.8.5

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## **SECTION 15 DVP SETTLEMENT OF ALLOCATIONS IN RESPECT OF INITIAL PUBLIC OFFERINGS**

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### **15.30 INABILITY TO PROCESS ALLOCATION COMPONENT IN DVP SETTLEMENT**

#### **15.30.1 Participant to forward application and application monies**

If:

- (a) ASX Settlement removes an Allocation Component from DvP Settlement under Rule 10.4.7 or 11.1.2; or
- (b) ASX Settlement imposes Restrictions on the participation of a ~~non-compliant~~ Participant under Rule 12.19.1(a),

and as a result a Participant is unable to process an Allocation Component in DvP Settlement, the Participant must immediately forward any applications and application monies to the relevant Issuer in order that the Issuer may process those applications prior to the Issue Date for the relevant Approved Financial Products.

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# ASX CLEAR (FUTURES) OPERATING RULES

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**PART 2    GENERAL**

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**3        ESTABLISHMENT OF ASX CLEAR (FUTURES)**

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**Disclosure of Information**

**3.4.1    Disclosure of information regarding Clearing Participants**

ASX Clear (Futures) may, where it considers it appropriate disclose information regarding its Clearing Participants and their activities that are relevant to ASX Clear (Futures) to:

- (a)        the Commission;
- (b)        the Reserve Bank of Australia;
- (c)        the Australian Prudential Regulation Authority;
- (d)        the Exchange;
- (e)        a Clearing & Settlement Facility; ~~and~~
- (~~e~~f)      any governmental agency or regulatory authority; ~~-and~~
- (~~g~~)      any clearing house, clearing and settlement facility or payments system (in Australia or elsewhere) in which a Clearing Participant is a member, for the purpose of assisting ASX Clear (Futures) or that clearing house, clearing and settlement facility or payments system to monitor the Clearing Participant's compliance or capacity to comply with its obligations or to manage a default by that Clearing Participant.

**3.4.2    ASX Clear (Futures) may disclose information**

ASX Clear (Futures) will take all reasonable measures to protect from unauthorised use or disclosure information provided to ASX Clear (Futures) in confidence by or on behalf of a Clearing Participant pursuant to the Rules. For the purposes of this Rule the disclosure of information in the following circumstances does not constitute unauthorised use or disclosure:

...



- (g) to any governmental agency or regulatory authority including, without limitation, an exchange (including, without limitation, an Approved Market Operator), market, clearing house or clearing and settlement facility (in Australia or elsewhere) which requests ASX Clear (Futures) to provide the information to it, in the proper exercise of its powers relating to:
  - (i) the order and good government of Participants; or
  - (ii) the efficient, honest, fair, competitive and informed trading, clearing and settlement of Futures Contracts (in Australia or elsewhere); ~~and~~
- (h) ~~to~~ any entity which provides financial backing or insurance to ASX Clear (Futures) for the purpose of enabling that entity to assess the risk to ASX Clear (Futures) or that entity from clearing activities generally or to assess any claim made in connection with a Clearing Participant's activities; ~~and~~
  - (i) to any clearing house, clearing and settlement facility or payments system (in Australia or elsewhere), whether or not pursuant to a Reciprocal Arrangement, for the purpose of assisting ASX Clear (Futures) or that clearing house, clearing and settlement facility or payments system to monitor a Clearing Participant's compliance with its obligations or to manage a default by that Clearing Participant.

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## 10 APPOINTMENT OF BOARD AS AGENT

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### Automatic Suspension

10.11 A Clearing Participant shall automatically be suspended without a meeting of the Board being required, if:

- (a) the Clearing Participant is in Default;
  - (b) the Clearing Participant is in breach of the Financial Requirements or the requirements of Rule 8.4 and fails to rectify that breach within 24 hours or such longer period as the Board in its absolute discretion may allow;
- or
- (c) where a liquidator, receiver, receiver and manager or administrator or some other form of external management is appointed in respect of the property of the Clearing Participant or if the Clearing Participant or a partner of the Clearing Participant becomes bankrupt. ~~Such suspension shall, unless the Board at its absolute discretion approves otherwise, continue for the duration of the liquidation or receivership, administration, bankruptcy or external management.~~

The suspension of a Clearing Participant under this Rule 10.11 shall continue for the period that the Board considers necessary or desirable. The Board may extend the period of suspension if it considers an extension is necessary or desirable.

...

## Interim Suspensions

10.14 Notwithstanding any other provision of this Rule 10, the Board may, ~~by unanimous resolution of those present at a meeting and entitled to vote and~~ on the basis that it reasonably believes it is necessary to do so in the interest of the public, or ASX Clear (Futures), suspend a Clearing Participant ~~pending the conduct of proceedings in accordance with this Rule 10. Such suspension shall not be for more than twenty one (21) days but may be extended from time to time by a unanimous resolution of those present and entitled to vote at a subsequent meeting. Where a suspension is made pursuant to this provision, proceedings shall commence within twenty one (21) days or within the period of any extension. The period of suspension will be the period that the Board considers necessary or desirable. The Board may extend the period of suspension if it considers an extension is necessary or desirable. The Clearing Participant must not hold itself out as a Clearing Participant during the period of suspension.~~

10.14A If a Clearing Participant has been suspended under Rules 10.11 or 10.14, the Clearing Participant must not hold itself out as a Clearing Participant during the period of suspension.

....

## 12 APPEALS

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12.6 If a notice of appeal is given in accordance with the ASX Enforcement and Appeals Rulebook, then pending a decision of the Appeal Tribunal unless the Appeal Tribunal otherwise determines:

~~(a) (i) any decision to refuse an application to become a Clearing Participant shall stand;~~

~~(ii) any suspension imposed by the Board or ASX Clear (Futures) shall remain in force;~~

~~(iii) where applicable, any termination of a Clearing Participant shall be deemed to be a suspension pending the decision of the Appeal Tribunal; and~~

(b) where there has been a finding of a breach of the Rules and an imposition of a sanction by ASX Clear (Futures) under the ASX Enforcement and Appeals Rulebook;

~~(i) any monetary penalty imposed shall not be required to be paid.~~

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## **22      REQUEST TO EXTEND OPERATING HOURS**

A request by a Clearing Participant to extend operating hours, cut-off times, deadlines or other closing times prescribed under these Rules or the Procedures, is to be made to ASX Clear (Futures) by such method as notified by ASX Clear (Futures) from time to time. Extensions may be granted by ASX Clear (Futures) in exceptional circumstances and will require individual justifications. Any extension will be granted for the duration specified by ASX Clear (Futures).

**232 to 29                      Not in use.**

## **....** **PART 7      PROCEDURES ON A DEFAULT**

### **71              Existence of Default**

**71.3      Events of Default referred to in Rule 71.1 are where:**

- (a)      the Clearing Participant fails to meet any of its obligations under Open Contracts or the Rules or Exchange Operating Rules or any agreement or understanding entered into with ASX Clear (Futures) or fails to comply with any reasonable directions of ASX Clear (Futures);
- (b)      Deleted
- (c)      the Clearing Participant fails to pay Initial Margins or Variation Margins or Daily Settlement Amounts or Intra Day Margins or Extra Margins within the period provided by these Rules;
- (d)      the Clearing Participant fails to pay an amount or amounts other than an amount or amounts to which paragraph (c) is applicable in total exceeding A\$1,000, which is due and payable to ASX Clear (Futures);
- (e)      an administrator of the Clearing Participant or a related body corporate of the Clearing Participant or similar person is appointed;
- (f)      except for the purposes of a solvent reconstruction or amalgamation previously notified to ASX Clear (Futures):
  - (i)      an application or an order is made, proceedings are commenced, a resolution is passed or proposed in a notice of meeting or an application to a court or other steps are taken for:
    - (A)      the winding up, dissolution or official management or administration of the Clearing Participant or a related body corporate of the Clearing Participant; or

- (B) the Clearing Participant or a related body corporate of the Clearing Participant enters into any arrangement, compromise or composition with or assignment for the benefit of its creditors or any class of them; or
  - (ii) the Clearing Participant ceases or suspends or threatens to cease or suspend substantially all of its business or threatens to dispose of substantially all of its assets; or
  - (iii) the Clearing Participant is or is deemed under any applicable legislation to be unable to pay its debts as and when they fall due (other than as a result of failure to pay a debt or claim the subject of a good faith dispute) or stops or suspends or threatens to stop or suspend payment of all or a class of its debts;-
- (g) the Clearing Participant or a related body corporate of the Clearing Participant is suspended, expelled or terminated as a member or participant of, or subject to any sanction imposed by, or declared in default or non-compliance under the rules of, any Australian or overseas, futures, securities, commodity or stock exchange or market or any other Australian or overseas clearing and settlement facility or is subject to any sanction imposeds by any Australian or overseas regulatory authority;
- (ga) the Clearing Participant has failed to comply with a determination made by an Old Tribunal (as defined in Rule 12B) pursuant to the Old Australian Securities Exchange Disciplinary Processes and Appeals Rulebook (as defined in Rule 12B);
- (gb) the Clearing Participant fails to comply with any action taken by ASX Clear (Futures) in accordance with Rule 9A.2(f) or the provisions of the ASX Enforcement and Appeals Rulebook (including as may be affirmed or varied by the Appeal Tribunal (as the case may be following an appeal against such action) pursuant to the ASX Enforcement and Appeals Rulebook);
- (h) with respect to all or any of the assets and undertaking of the Clearing Participant or a related body corporate of the Clearing Participant:
  - (i) a receiver, receiver and manager, administrative receiver, administrator or similar officer is appointed;
  - (ii) a Security Interest is enforced; or
  - (iii) a distress, attachment, or other execution is levied or enforced.
- (i) an investigator, inspector or other officer is appointed or an investigation is directed or commenced under the Corporations Act or any other legislation to investigate all or any part of the affairs of the Clearing Participant or a related Company of the Participant, in circumstances which are material to its capacity to meet its obligations to ASX Clear (Futures);
- (j) anything analogous to anything referred to in paragraphs (a) to (i) inclusive, or having substantially similar effect, occurs with respect to the Clearing Participant or a related body corporate of the Clearing

Participant including, without limitation, anything occurring outside Australia or under the law of a jurisdiction other than Australia;

- (k) the Clearing Participant is the subject of a notice under any insurance referred to in Rule 7.1(e), or any other insurance taken out by ASX Clear (Futures) to enable it to meet its obligations to Clearing Participants which affects the amount or conditions or operation of such insurance;
- (l) there is an event deemed or described as a default by the Exchange Operating Rules or as otherwise provided in the Rules including a failure to comply with the requirements of Rule 9 or Exchange Operating Rules relating to position limits;
- (m) the Clearing Participant acts fraudulently or in a misleading or deceptive manner with respect to any Open Contract or Market Contract the registration of which gave rise to an Open Contract;
- (n) the Clearing Participant fails to comply, or indicates that it will or may fail to comply, with any of the Rules or the Procedures or the terms of any agreement with ASX Clear (Futures);
- (o) upon request by ASX Clear (Futures), which may be made at any time, the Clearing Participant fails to confirm on or before the cut-off time reasonably specified by ASX Clear (Futures) in its request that it is able to pay its debts as they become due and payable; and
- (pe) any other event or series of events, whether related or not, occurs (or appears likely to occur) which in the opinion of the Board or Managing Director has (or appears likely to have) a material effect on the capacity of the Clearing Participant to meet its obligations to ASX Clear (Futures).

## 72 Powers of ASX Clear (Futures) Upon A Default and Determination of A Loss

72.1 Upon a Default by a Clearing Participant ASX Clear (Futures) shall in its absolute discretion have the power to do all or any of the following in any order:

- (a) to Close Out all or any Open Contracts of the Clearing Participant in Default including in its absolute discretion Open Contracts in the Client Clearing Account by Closing Out any opposite positions in any House Clearing Account or Client Clearing Account and/or by buying or selling opposite positions on the Exchanges Markets as if a request to Close Out had been made by the Clearing Participant in Default pursuant to Rule 46 and to appropriate any excess after the application of Rule 47 or 48. Without limitation, a Close Out may occur by the matching of opposite positions which are held in different Accounts or Client Sub-Accounts of the Clearing Participant in Default. The prices attributable to the Close Out of any Open Contracts is to be determined by ASX Clear (Futures) in its discretion provided that the price is fair and equitable as between Open Contracts regardless of the Account in which they were registered and whether they were closed out on- or off-market the price is the same for identical Closed Out Open Contracts (regardless of the Account in which they were held). Without limitation, if any two Clearing Participants are in default and hold Open Contracts that ASX Clear (Futures) determines to be opposite positions, ASX Clear (Futures) shall in its absolute discretion have the power to Close Out these Open

Contracts by the matching of these opposite positions. The price attributable to the Close Out of such Open Contracts is to be determined by ASX Clear (Futures) in its discretion;

- (b) to sell, realise, apply and set off any monies, securities, collateral or other property deposited with ASX Clear (Futures) by the Clearing Participant in Default by way of Initial Margin, Commitment or otherwise (whether or not arising from obligations under the Rules) and to apply the proceeds towards satisfaction of any amount payable by the Clearing Participant in Default to ASX Clear (Futures) under or in connection with these Rules and the OTC Rules, without being required to give notice to or obtain the consent of the Clearing Participant in Default or any court order, with full power to execute any documents in its own name or as attorney for the Clearing Participant in Default for that purpose, PROVIDED ALWAYS that any monies, securities, collateral or other property deposited with ASX Clear (Futures) with respect to Open Positions designated to a Client Clearing Account or which are subject to a written agreement under Regulation 7.8.02(3) of the Corporations Regulations 2001, or an acknowledgment under Regulation 10 of the Futures Industry (Client Funds) Regulations 1990 of New Zealand, may be used to meet obligations in a Client Clearing Account and shall not be used to meet any obligations in a House Clearing Account;
- (c) to apply any surplus in any House Clearing Account of the Clearing Participant in Default to any deficiency on any Client Clearing Account of the Clearing Participant in Default;

- (d) to Transfer pursuant to Rule 74.1 all or any Open Positions designated to a Client Clearing Account of the Clearing Participant in Default to another Clearing Participant with the written authority of such transferee Clearing Participant, together with any Initial Margins which in the opinion of ASX Clear (Futures) are held with respect to such Open Positions;
- (e) to Exercise or Abandon any Option Contract of the Clearing Participant in Default. Any such Exercise or Abandonment shall be deemed to have been effected by the Clearing Participant which is the party to the Option Contract;
- (f) notwithstanding any direction given under Rule 63, to itself give or take delivery of any Commodity;
- (g) to Close Out any remaining Open Contracts of the Clearing Participant in Default in the manner referred to in Rule 72.2;
- (h) terminate Open Contracts of the Clearing Participant in Default at a price determined by ASX Clear (Futures) subject to these Rules;
- (i) to terminate the Clearing Participant in Default's rights and status as a Clearing Participant in accordance with Rule 72.1A;
- (j) to do any thing permitted by the OTC Rules; and
- (k) to do all such other necessary acts and things as are ancillary or incidental to the execution of ASX Clear (Futures)' powers enumerated under these Rules in connection with the Default, provided that, for the avoidance of doubt, in exercising power under paragraphs (a) to (k), ASX Clear (Futures) may not:
  - (i) affect the order in which assets are applied under Rule 7.1; or
  - (ii) Invoice Back or Force Allocate Open Contracts to another Clearing Participant.

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# AUSTRACLEAR REGULATIONS

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## 1. INTERPRETATION

### 1.1 Definitions

In these Regulations, unless the context otherwise requires:

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"**Insolvency Event**" means, in relation to a person, the happening of any of the following events:

- (a) if the person is a body corporate, the person becoming a ~~Chapter 5 body corporate~~ ~~externally-administered body corporate~~ within the meaning of the Corporations Law; or
- (b) if the person is an individual, the person becoming an insolvent under administration within the meaning of the Corporations Law; or
- (c) someone taking control of the person's property for the benefit of the person's creditors because the person is, or is likely to become, insolvent;

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#### 1.10 Request to extend operating hours

A request by a Participant to extend operating hours, cut-off times, dead-lines or other closing times prescribed under these Regulations or the Procedures, Determinations and Practice Notes is to be made to Austraclear by such method notified by Austraclear from time to time. Extensions may be granted by Austraclear in exceptional circumstances and will require individual justifications. Any extension will be granted for the duration specified by Austraclear.

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## 3. PARTICIPANTS GENERALLY

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### 3.10 Right to Suspend or Terminate Participant Status

(a) Subject to paragraph (b), where:

- (i) Austraclear receives a notice under paragraph (a), (b), (c) or (e) of Regulation 3.9 or otherwise becomes aware that a Participant or a Participating Bank has become subject to an Insolvency Event, or that there is a reasonable suspicion that a Participant or Participating Bank may become subject to an Insolvency Event;



- (ii) Austraclear determines that a Participant has failed to meet an obligation of the Participant under the Austraclear Regulations or Austraclear determines that a Participant no longer satisfies the eligibility requirements or the requirements for admission to Participant Status set out in Regulation 2.4 or Austraclear is no longer satisfied that having regard to the relevant considerations set out in Regulation 2.4 the Participant should be admitted to Participant Status;
- (iii) a Participant has failed to comply with a determination made by an Old Tribunal (as defined in Regulation 3.14B) pursuant to the Old Australian Securities Exchange Disciplinary Processes and Appeals Rulebook (as defined in Regulation 3.14B); ~~or~~
- (iv) a Participant fails to comply with any action taken by Austraclear in accordance with Regulation 3.11 or the provisions of the ASX Enforcement and Appeals Rulebook (including as may be affirmed or varied by the Appeal Tribunal (as the case may be following an appeal against such action) pursuant to the ASX Enforcement and Appeals Rulebook); or
- (v) a Participant is suspended, expelled or terminated as a member or participant of, or subject to any sanction imposed by, or declared in default or non-compliance under the rules of, any Australian or overseas derivatives, securities, commodity or stock exchange or market or any clearing and settlement facility or is subject to any sanction imposed by an Australian or overseas regulatory authority or the Participant ceases to be entitled to carry on business,

the Committee may suspend the Participant Status, and in the circumstances set out in paragraph (i) above terminate the Participant Status, of the relevant Participant or Participating Bank (as the case may be).

- (b) If the Participant is a Participating Bank, the Committee may, in addition to its rights under paragraph (a), suspend the Participant Status of any Participant who maintains its Nominated Account with that Participating Bank.
- (c) Where Austraclear receives a notice under paragraph (d) of Regulation 3.9 or otherwise becomes aware that a Participant or a Participating Bank has become subject to a Change in Control, the Committee may suspend the Participant Status or terminate the Participant Status of the relevant Participant or Participating Bank (as the case may be).

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### 3.12 Suspension and Termination

Where Austraclear pursuant to the Regulations suspends a Participant's Participant Status:

- (a) no Transaction to which that Participant is a party may be Settled until the suspension is lifted;
- (b) ~~Austraclear must as soon as practicable after the suspension, review the Participant's Participant Status to determine whether the Participant will comply with the conditions for Participant Status for the relevant class of Participant~~ the period of

suspension will be the period that Austraclear considers necessary or desirable. Austraclear may extend the period of suspension if it considers an extension is necessary or desirable;

- (c) the Participant must not hold itself out as a Participant during a period of suspension must give Austraclear any information requested by Austraclear to enable it to review the Participant's Participant Status; and
- (d) Austraclear may, after its reviewing the Participant's Participant status to determine whether the Participant will comply with the conditions for Participant status for the relevant class of Participant, may continue the suspension (in which case it must be periodically reviewed), terminate the Participant's Participant Status, or lift the suspension (which it may only do if it forms the view that the continuing use of the System by the Participant will not be contrary to the interests of the Participants of the System and which may be on any conditions that Austraclear considers, in its absolute discretion, to be appropriate). The Participant must give Austraclear any information requested by Austraclear to enable it to review the Participant's Participant status.

### **3.13 Appeals against Monetary Penalties, Extended Suspension or Termination**

- (a) Subject to paragraph (b), where Austraclear under Regulation 3.11 imposes a monetary penalty on a Participant or Austraclear under Regulation 3.12 suspends a Participant's Participant status continues an existing suspension so that the total period of the suspension is for more than 10 continuous Business Days or terminates a Participant's Participant Status, the matter may be appealed in accordance with the provisions of the ASX Enforcement and Appeals Rulebook.
- (b) A Participant or Participating Bank has no right of appeal against an exercise of the Committee's rights under Regulation 3.10.

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## **20. LIMITATION OF LIABILITY**

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### **20.3 Counterparty risk assessment**

A Participant is responsible for undertaking its own counterparty risk assessment. One or more Participants may undertake state banking or state insurance business in the course of their activities on the System and may therefore have the benefit of sovereign immunity. Participants should consider this in their counterparty risk assessment.

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# ASX ENFORCEMENT & APPEALS RULEBOOK

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## SECTION 3 APPEALS

### 3.1 DECISIONS THAT MAY BE APPEALED

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#### 3.1.7 Austraclear Regulation Appeals

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- (c) A Participant if dissatisfied with a decision of ASX under Austraclear Regulation 3.12 to ~~continue an existing suspension suspend the Participant's of its~~ Participant Status (as defined in the Austraclear Regulations) ~~so that the total period of the suspension is~~ for more than 10 continuous Business Days (as defined in the Austraclear Regulations) or to terminate its Participant Status (as defined in the Austraclear Regulations).
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# ASX SETTLEMENT OPERATING RULES PROCEDURES

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## SECTION 12

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### PROCEDURE 12.19.5 – CONTENT OF NOTICES

The matters to be specified in the Notice are:

- (a) the reason for the Restrictions, suspension or termination;
  - (b) the date on which the Restrictions, suspension or termination will become effective;
  - (c) the nature and extent of the Restrictions to apply to the participation of the ~~non-compliant~~ Participant;
  - (d) the period for which the Restrictions or suspension will apply;
  - (e) the date by which outstanding transactions of the ~~non-compliant~~ Participant that affect a CHESSE Holding under the control of that Participant must be completed; ~~and~~
  - (f) the date by which all CHESSE Holdings under the control of the ~~non-compliant~~ Participant must be:
    - (i) removed from the CHESSE Subregister; or
    - (ii) removed from the control of that Participant.
-