

ASX CLEAR (FUTURES) OPERATING RULES

PART 1 DEFINITIONS

1.1 In these Rules, except where the content otherwise requires, words and expressions shall have the same meaning as in the Articles, provided that, except where the context otherwise requires the words and expressions in the first column in Rule 1.1 hereunder shall have the meaning assigned to them in the second column. In the absence of a contrary definition in these Rules, words and expressions shall have the same meaning as in the Exchange Operating Rules.

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| Open Contract | (a) Except where paragraph (b) <u>or (c)</u> applies, a contract of a Clearing Participant with ASX Clear (Futures) deemed to arise from: <ul style="list-style-type: none">(i) the registration of a Market Contract;(ii) an Allocation;(iii) a Transfer;(iv) the Exercise of an Option Contract; or(v) a daily settlement in accordance with Rule 44. |
| | (b) In the case of a Facility Participant, unless the context otherwise requires, a contract between ASX Clear (Futures) and the Facility Participant referred to in Rules 31A.7 and 31A.8. |
| | <u>(c) A contract established by ASX Clear (Futures) pursuant to Rule 72.1(aa).</u> |

Amended 28/10/02, 04/12/02, 01/07/13, 11/02/14. [date]

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23 EXTENSION OF INDEMNITIES AND DISCLAIMERS

Benefits extend to others

23.1 Where a Rule excludes or limits the liability of ASX Clear (Futures), releases ASX Clear (Futures) from liability, or provides for an indemnity in favour of ASX Clear (Futures), then to the extent permitted by law, that exclusion, limitation, release or indemnity (as applicable) extends to:

- (a) every officer, agent, delegate, person acting for or on behalf of ASX Clear (Futures) or contractor of ASX Clear (Futures); and
- (b) every Related Body Corporate of ASX Clear (Futures) and every officer, person acting for or on behalf of that Related Body Corporate, agent, delegate or contractor of that Related Body Corporate,

as if a reference in that Rule to ASX Clear (Futures) included a reference to each of them.

Introduced [XX]

Benefit held by ASX Clear (Futures) on behalf of those persons

23.2 The benefit of any limitation, exclusion, release or indemnity in favour of any person other than ASX Clear (Futures) under Rule 23.1 is held by ASX Clear (Futures) for the benefit of those other persons and ASX Clear (Futures) may enforce that benefit on their behalf.

Introduced [XX]

Explanatory Note:

The indemnity granted under Rule 23 extends to every Related Body Corporate of ASX Clear (Futures), including ASX Clear Pty Limited (**ASX Clear**). ASX Clear (Futures) may net any amount due by a Clearing Participant in Default to ASX Clear (Futures) (including on account of the indemnity granted by the Clearing Participant in Default for costs incurred by ASX Clear in connection with the Default) against any amount due by ASX Clear (Futures) to the defaulting Clearing Participant (see Rule 72.3). ASX Clear (Futures) may apply and set off any property deposited with ASX Clear (Futures) by the Clearing Participant in Default as Initial Margin, Commitment or otherwise towards satisfaction of the net amount payable by the Clearing Participant in Default to ASX Clear (Futures) (which would include the indemnified costs incurred by ASX Clear in connection with the Default) (see Rule 72.1(b)).

23-24 to 29

Not in use.

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PART 7 PROCEDURES ON A DEFAULT

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 the same for identical Closed Out Open Contracts (regardless of the Account in which they were held);

(aa) to terminate all or any Open Contracts (other than OTC Open Contracts) of the Clearing Participant in Default (including Open Contracts in the Client Clearing Account), and to auction, in accordance with the Procedures,

- ~~(i) -Open Contracts newly established by ASX Clear (Futures) which, taken as a whole, are equivalent to all or some of the Open Contracts of the Clearing Participant in Default; and~~
- ~~(ii) Open Contracts arising from ASX Clear (Futures) hedging the portfolio of the Clearing Participant in Default in accordance with Rule 72.2,~~
- ~~(i) (such newly established Open Contracts to be known as **DM Auction Transactions**);~~

Explanatory Note: Refer to Rules 72.1B and 72.2 and Procedure 72.1(aa) Powers of ASX Clear (Futures) Upon A Default and Determination of A Loss (DM Auction Procedures)

- (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.

Amended 03/06/97, 19/05/98, 01/07/13, 11/02/14, 01/10/15, [\[date\]](#)

- 72.1A (a) Subject to Rules 72.1A(d) and (e), a termination of the rights and status of a Clearing Participant in Default is not effective unless:
- (1) ASX Clear (Futures) has given notice of termination in writing to the Clearing Participant;
 - (2) ASX Clear (Futures) confirms to the Clearing Participant in writing that the Clearing Participant has satisfied the following conditions:
 - (A) it has performed all of its accrued obligations under the Rules (including but not limited to the payment of all fees), or such obligations have been satisfied following the exercise of ASX Clear (Futures)'s powers under Rules 72.1 or 73;
 - (B) it is not the subject of any disciplinary proceedings or enforcement action within the jurisdiction of ASX Clear (Futures);
 - (C) it has no Open Contracts.
- (b) Following the Clearing Participant's receipt of the notice of termination referred to in Rule 72.1A(a)(1) above, the Clearing Participant may not use the clearing facilities provided by ASX Clear (Futures) in accordance with these Rules except with the prior written consent of ASX Clear (Futures).
- (c) Subject to Rules 72.1A(d) and (e):
- (1) termination will be effective at the end of the last day of the quarter in which the Clearing Participant meets the conditions in Rule 72.1A(a) above, provided those conditions are met at least 30 days prior to the last day of the quarter; and
 - (2) if the Clearing Participant meets those conditions less than 30 days prior to the last day of the quarter, the Clearing Participant's termination will be effective at the end of the last day of the following quarter.
- For these purposes, quarters are as defined in Schedule 10.
- (d) The confirmation by ASX Clear (Futures) that the Clearing Participant has satisfied the conditions in Rule 72.1A(a)(2) or the effectiveness of the termination of the rights and status of the Clearing Participant in Default does not affect any accrued rights which ASX Clear (Futures), a Related Body Corporate of ASX Clear (Futures), or other Clearing Participants have against the Clearing Participant in Default or any accrued obligations which the Clearing Participant in Default has to ASX Clear (Futures), a Related Body Corporate of ASX Clear (Futures) or to other Clearing Participants.
- (e) Without limiting Rule 72.1A(d) above, following the termination of the rights and status of the Clearing Participant in Default becoming effective:
- (1) the Rules continue to apply and ASX Clear (Futures) will continue to have jurisdiction in respect of the Clearing Participant in Default

concerning any conduct or any failure to comply with the Rules which occurred before the acceptance of the notice or termination of authority, whether that conduct or failure was by the Clearing Participant in Default or by any other person for whose conduct the Clearing Participant in Default was responsible;

- (2) the Clearing Participant continues to be bound by any indemnity given by the Clearing Participant in Default under these Rules; and
- (3) other Rules continue to apply in respect of the Clearing Participant in Default to the extent required to give effect to Rules 72.1A(e)(1) and (2).

Introduced 01/07/13 Amended 01/10/15

72.1B (a) By way of supplement to Rule 72.1(aa) above, and not by limitation, if a Clearing Participant is in Default then ASX Clear (Futures) can declare:

(1) that the obligations of the Clearing Participant and ASX Clear (Futures) under relevant Open Contracts (other than OTC Open Contracts) of the Clearing Participant (including Open Contracts in the Client Clearing Account) are to be the subject of a termination; and

(2) the time at which such termination is to be effective (referred to as the **Termination Time**).

(b) The Open Contracts which are the subject of such a declaration under Rule 72.1B(a) may relate to either House Positions or Client Positions (or both) and are referred to as **Terminated Open Contracts**.

(c) If ASX Clear (Futures) makes such a declaration under Rule 72.1B(a) then the present and future obligations of ASX Clear (Futures) and the Clearing Participant (and if applicable, the relevant CPM Client) to make payments under the terms of the Terminated Open Contracts (including payments of Variation Margin) are terminated and the payments are no longer required to be made.

Explanatory Note: following termination of Open Contracts relating to Client Positions, such positions cease to be Client Positions and may be combined with Terminated Open Contracts relating to House Positions.

(d) ASX Clear (Futures) may, at any time, calculate a **Termination Value** in respect of one or more Terminated Open Contracts as selected by ASX (Clear) Futures. Without limiting the factors which ASX Clear (Futures) may take into account in determining such Termination Value, it may take into account its determination of:

(1) the value of obligations which fell due in connection with the Terminated Open Contract(s) (including payment of Variation Margin) before the Termination Time but which have not been performed;

(2) the value of obligations which would have been due for performance under the Terminated Open Contract(s) after the Termination Time if the Terminated Open Contract(s) had not been terminated (including payment of Initial Margin and Variation Margin); and

(3) its losses, costs, charges and expenses in connection with the management of the Default of the relevant Clearing Participant with respect to the Terminated Open Contract(s) including, without limitation, costs and expenses associated with hedging any exposure of ASX Clear (Futures) arising out of the Default, and amounts payable by it in respect of any DM Auction held in accordance with Rule 72.1(aa).

ASX Clear (Futures)' determination of a Termination Value is conclusive, but does not limit any of its rights under these Rules or at law.

(e) ASX Clear (Futures) may include a Termination Value calculated by it in any netting conducted in accordance with Rule 72.3.

(f) If Terminated Open Contracts involved in a default management process conducted in accordance with Rule 72.1(aa) relate to both House Positions and Client Positions of a Clearing Participant in Default, or the Open Positions of more than one Clearing Participant in Default, then ASX Clear (Futures):

(1) may combine any such Terminated Open Contracts so that they are treated as part of one or more portfolios at any time after the commencement of the default management process for the purpose of auction in accordance with the relevant powers under Rule 72.1(aa);

(2) is to allocate any losses, costs, charges and expenses in connection with that default management process between the relevant Clearing Participant(s) in Default and between the House Accounts, Client Accounts and Client Sub-Accounts of the relevant Clearing Participant(s) in Default which relate to those Terminated Open Contracts (referred to in this Rule 72.1B as a **Relevant Account**). The losses, costs, charges and expenses are to be calculated as of the time of combination of such Terminated Open Contracts and will be conducted by allocating any losses, costs, charges and expenses to each Relevant Account proportionately to its relative risk as determined by ASX Clear (Futures) using the value of Initial Margin calculated with respect to each Relevant Account at the time of combination of the Terminated Open Contracts; and

(3) in the case of a Relevant Account which is a Client Sub-Account, is to deduct any losses, costs, charges and expenses so attributed to that Client Sub-Account in accordance with (2) above from the Guaranteed Initial Margin Value of that Client Sub-Account in accordance with the Client Protection Model Provisions.

Introduced [date]

72.2 ASX Clear (Futures) may offset or hedge any exposure arising from a Default by trading Market Contracts by means of:

- (a) trading on any trading system maintained by the Relevant Exchange through a Participant of the Relevant Exchange; or
- (b) by direct agreement with market participants or any other persons or as may be permitted or directed by the Relevant Exchange in accordance with Exchange Operating Rules,

and shall register any Market Contract so traded. ASX Clear (Futures) and may auction the Open Contract so traded (in accordance with the Procedures) or Close Out the Open Contract so traded against Open Contracts of the Clearing Participant, as if such Market Contracts had been entered into by the Clearing Participant in Default.

Explanatory Note: Refer to Rule 72.1(aa) and Procedure 72.1(aa) Powers of ASX Clear (Futures) Upon A Default and Determination of A Loss (DM Auction Procedures)

Amended [date]

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

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

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

Introduced 13/07/09 Amended 01/07/13, 11/02/14, 01/10/15

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

Introduced 11/02/14

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Schedule 1 – Relationship with Futures Rules

This schedule sets out whether, for each Futures Rule, it is replaced by a specific OTC Rule or is varied or supplemented by a specific OTC Rule, and, if neither, whether it otherwise applies to OTC Clearing, or is not relevant to OTC Clearing.

A Futures Rule	B Replaced by OTC Rule (and Futures Rule does not apply)	C Supplementary OTC Rule (and Futures Rule applies as varied or supplemented)	If not referred to in column B or C:	
			D Futures Rule applies	E Futures Rule not relevant (and does not apply)
...				
23			Applicable	
...				
72.1B				Not relevant
...				

Amended 11/02/14, 31/08/15, 30/11/15, 03/07/17, [29/11/2021](#), [date]