

## NOTIFICATION OBLIGATIONS

<p><b>The purpose of this Guidance Note</b></p>	<ul style="list-style-type: none"> <li>To provide guidance to participants on their notification obligations under the ASX Clear (Futures) Operating Rules</li> </ul>
<p><b>The main points it covers</b></p>	<ul style="list-style-type: none"> <li>General notification obligations under the ASX Clear (Futures) Operating Rules</li> <li>Notification of significant breaches</li> <li>Lodging notifications via ASX Online</li> <li><u>Capital</u>-related notifications</li> <li><u>Business Continuity and Disaster Recovery notifications</u></li> </ul>
<p><b>Related materials you should read</b></p>	<ul style="list-style-type: none"> <li>A list of the notifications that can be submitted to ASX via the participant forms facility on ASX Online and the relevant notification name: <a href="https://www.asxonline.com/content/dam/asxonline/public/documents/manuals/participant-notifications.pdf">https://www.asxonline.com/content/dam/asxonline/public/documents/manuals/participant-notifications.pdf</a></li> <li>Instructions on how to use the participant forms facility on ASX Online: <a href="https://asxonline.com/content/dam/asxonline/public/documents/manuals/participant-forms-guide.pdf">https://asxonline.com/content/dam/asxonline/public/documents/manuals/participant-forms-guide.pdf</a></li> <li>ASX Return Lodgement and Monitoring System user guide: <a href="http://www.asxonline.com/content/dam/asxonline/public/documents/manuals/rm-system-user-guide/rm-system-user-guide.pdf">www.asxonline.com/content/dam/asxonline/public/documents/manuals/rm-system-user-guide/rm-system-user-guide.pdf</a></li> </ul>

**History:** Guidance Note 8 amended 15/12/2019 and 01/19. Previous versions of this Guidance Note were issued in 06/15, 08/16, and 04/18 and 01/19.

**Important notice:** ASX has published this Guidance Note to assist participants to understand and comply with their obligations under the ASX Clear (Futures) Operating Rules. It sets out ASX's interpretation of the ASX Clear (Futures) Operating Rules and how ASX is likely to enforce those rules. Nothing in this Guidance Note necessarily binds ASX in the application of the ASX Clear (Futures) Operating Rules in a particular case. In issuing this Guidance Note, ASX is

not providing legal advice and participants should obtain their own advice from a qualified professional person in respect of their obligations. ASX may withdraw or replace this Guidance Note at any time without further notice to any person.

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## 1. Introduction

The purpose of this Guidance Note is to provide guidance to participants on their notification obligations under the ASX Clear (Futures) Operating Rules.

## 2. General notification obligations

Under the ASX Clear (Futures) Operating Rules, a participant is required to notify ASX Clear (Futures) Pty Limited (ASX) in writing of the following matters:

- **change of name** – any change to its name or the name under which it carries on business as a participant, before the change becomes effective;<sup>1</sup>
- **change of address** – any change to any address at which the participant carries on business as a participant, before the change becomes effective;<sup>2</sup>
- **change of director** – the appointment, resignation or removal of a director within 10 business days of the change;<sup>3</sup>
- **change of controller** – a person who is not a controller becomes a controller or a person who is a controller ceases to be a controller, immediately upon that happening;<sup>4</sup>
- **change of licence** – any change to a licence or approval granted to it by a regulatory authority to enable the participant to carry on its business as a participant, immediately upon that happening;<sup>5</sup>
- **information about other changes in business** – any other material change in information concerning its business as a participant from that previously provided to ASX, immediately upon the participant determining the change will occur that happening;<sup>6</sup>
- **group structure chart** – if the participant is not an ADI, a copy of the participant's group structure chart annually as at 30 June each year by 31 July that year;<sup>7</sup>

<sup>1</sup> ASX Clear (Futures) Operating Rule 4.14(c)(i).

<sup>2</sup> ASX Clear (Futures) Operating Rule 4.14(c)(ii).

<sup>3</sup> ASX Clear (Futures) Operating Rule 4.14(d).

<sup>4</sup> ASX Clear (Futures) Operating Rule 4.14(da).

<sup>5</sup> ASX Clear (Futures) Operating Rule 4.14(b).

<sup>6</sup> ASX Clear (Futures) Operating Rule 4.14(db).

<sup>7</sup> ASX Clear (Futures) Operating Rule and Procedure 4.14(ac). The notification This is to be lodged submitted via ASX's prescribed method of ASX Online email to [compliance@asx.com.au](mailto:compliance@asx.com.au) (ASX Clear (Futures) Operating Rules Procedure 4.14(ac)). Note, if the participant's group structure chart has not changed from the last version provided to ASX Clear (Futures), the participant may satisfy this obligation by referring

- **change of auditor** – the appointment, removal or resignation of an auditor, within 10 business days of the event;<sup>8</sup>
- **significant audit issue in ASIC Form FS71** – an auditor identifies a significant issue in an ASIC Form FS71 or equivalent report lodged with ASIC pursuant to section 989B(3) of the Corporations Act 2001 (Cth),<sup>9</sup> immediately upon the report being lodged with ASIC;<sup>10</sup>
- **overseas activity** – the participant intending to locate or relocate any part of its business as a participant<sup>11</sup> or personnel engaged in its business as a participant outside Australia, prior to the commencement of the overseas activity;<sup>12</sup>
- **overseas taxes** – if the participant is incorporated outside Australia or conducts any part of its business as a participant outside Australia and that may have tax ramifications for ASX or any other person bound by the ASX Clear (Futures) Operating Rules in relation to any transaction or agreement involving the participant, information about those tax ramifications, before the relevant transaction or agreement is entered into;<sup>13</sup>
- **appointment or cessation of agent for service of process** – where the participant is not incorporated or registered as a foreign company under the Corporations Act:
  - the acceptance by an agent of its appointment as the participant’s agent for service of process in Australia as soon as practicable after the acceptance;<sup>14</sup> and
  - the intended effective date of any agent ceasing for any reason to act as the participant’s agent for service of process in Australia;<sup>15</sup>
- **notification to insurers** – any notification to its professional indemnity (or equivalent) insurer of any claim, potential claim or circumstances that might give rise to a claim that relates in any way to its activities as a participant, immediately upon giving the notification;<sup>16</sup>
- **legal proceedings** – the participant commences legal proceedings against, or has legal proceedings commenced against it by, another participant, a trading participant, ASIC or other regulatory authority or a client in connection with its role as a participant and those legal proceedings may affect the operations of ASX or the interpretation of the ASX Clear (Futures) Operating Rules, immediately upon commencing or becoming aware of the proceedings;<sup>17</sup>
- **notification of regulatory action against the participant or an employee** – the participant is informed by ASIC or its delegate (or any other person authorised under the Corporations Act), an exchange, a market operator, a clearing and/or settlement facility or a regulatory body that action is being or may be taken against the participant or any of its employees that relates in any way to its activities as a participant, on or before the next business day of the participant being so informed. Please note, the reference in this rule to action that “may be taken” against a participant or any of its employees means that the notification obligation

to the date on which that last version was provided to ASX [Clear \(Futures\)](#) and stating that its group structure chart provided to ASX [Clear \(Futures\)](#) on that date has not changed.

<sup>8</sup> ASX Clear (Futures) Operating Rule 4.14(ab)(ii).

<sup>9</sup> Referred to in this Guidance Note as the “Corporations Act”.

<sup>10</sup> ASX Clear (Futures) Operating Rule 4.14(aa).

<sup>11</sup> Including, without limitation, any gateway or other means of communicating clearing messages to ASX or any employees.

<sup>12</sup> ASX Clear (Futures) Operating Rule 4.15A(a) and ASX Clear (Futures) Operating Rules Procedure 4.15A paragraph (a).

<sup>13</sup> ASX Clear (Futures) Operating Rule 4.15A(b).

<sup>14</sup> ASX Clear (Futures) Operating Rule 4.15A(e)(ii). The agent must be resident in Australia and approved by ASX (ASX Clear (Futures) Operating Rules 4.15A(e)(i) and (iv)).

<sup>15</sup> ASX Clear (Futures) Operating Rule 4.15A(e)(iii).

<sup>16</sup> ASX Clear (Futures) Operating Rule 4.14(e) and ASX Clear (Futures) Operating Rules Procedure 4.14(e) paragraph (c).

<sup>17</sup> ASX Clear (Futures) Operating Rule 4.14(m).

arises even before the formal commencement or conclusion of enforcement proceedings. For example, a participant should notify ASX if it becomes aware that a matter relating in any way to its activities as a participant of ASX Clear (Futures) has been referred to the enforcement division of ASIC, an exchange, a market operator, a clearing and settlement facility or any other regulatory body for consideration of enforcement or other action;<sup>18</sup>

- **significant rule breach** – the participant becomes aware of having committed a significant breach of the ASX Clear (Futures) Operating Rules and/or Procedures under Rule 4.11(f), immediately upon becoming aware of the breach;<sup>19</sup>
- **event of default** – if an event of default occurs under rule 71.3 or if the participant has reasonable grounds to suspect that an event of default may occur, immediately upon that occurring;<sup>20</sup>
- **insolvency or inability to comply with rules** – the participant becomes aware of any event or circumstance which adversely affects, or may adversely affect, its financial position or solvency immediately upon becoming so aware;<sup>21</sup>
- **inability to comply with rules** – the participant becomes aware of any event or circumstance which adversely affects, or may adversely affect, its ability to comply with the ASX Clear Operating Rules or Procedures, immediately upon becoming so aware;<sup>22</sup>
- **communication issues** – the participant is unable to communicate reliably with the Exchange System, as soon as practicable after becoming so aware;<sup>23</sup>
- **ceasing clearing a category of market contract** – the participant intends to resign its authorisation to clear a category of market contract, prior to the proposed date of resignation and subject to ASX's written confirmation;<sup>24</sup> and
- **incomplete, inaccurate or misleading information** – the participant becomes aware that information which it or its employees have previously given to ASX was incomplete, inaccurate or misleading, promptly upon becoming so aware.<sup>25</sup>

Where a participant is also a participant in another market or clearing and settlement facility operated by ASX or a related body corporate of ASX and the notice being provided relates to both participations, a notice given to ASX or a related body corporate of ASX in accordance with the operating rules of that other market or facility is taken to be given to ASX in accordance with the ASX Clear (Futures) Operating Rules.<sup>26</sup>

<sup>18</sup> ASX Clear (Futures) Operating Rule 4.14(n) ASX Clear (Futures) Operating Rule 4.14(n). Note that the reference in this rule to action that "may be taken" against a participant or any of its employees means that the notification obligation arises even before the formal commencement or conclusion of enforcement proceedings. For example, a participant should notify ASX if it becomes aware that a matter relating in any way to its activities as a participant of ASX Clear (Futures) has been referred to the enforcement division of ASIC, an exchange, a market operator, a clearing and settlement facility or any other regulatory body for consideration of enforcement or other action.

<sup>19</sup> ASX Clear (Futures) Operating Rule 4.11B. See also '3. Significant breaches' on page 4 of this Guidance Note.

<sup>20</sup> ASX Clear (Futures) Operating Rule 71.1(a).

<sup>21</sup> ASX Clear (Futures) Operating Rule 4.14(f).

<sup>22</sup> ASX Clear (Futures) Operating Rule 4.11(f). By way of example, this would include notifying ASX if the participant became aware of any event or circumstance that would lead to the participant being unable, or likely to be unable, to meet its margin and other financial obligations to ASX under the ASX Clear (Futures) Operating Rules. It would also include the participant becoming aware of the likelihood of Chapter 5 an external administrator being appointed to the participant or its assets.

<sup>23</sup> ASX Clear (Futures) Operating Rule 4.14(o).

<sup>24</sup> ASX Clear (Futures) Operating Rule 11.1(a) and (b). If the participant notifies that it is resigning all of its authorisations then it is taken to also be notifying its resignation as a clearing participant (see ASX Clear (Futures) Operating Rules Guidance Note 2 *Resigning a Participation*.)

<sup>25</sup> ASX Clear (Futures) Operating Rule 4.11C.

<sup>26</sup> ASX Clear (Futures) Operating Rules Procedure 19.1 'Notice to ASX Clear (Futures)' concluding paragraph.

### 3. Significant breaches

As mentioned above, a participant is required to notify ASX immediately if it becomes aware of having committed a significant breach of the ASX Clear (Futures) Operating Rules or Procedures.<sup>27</sup> For the purposes of determining whether a breach is “significant”, a participant must have regard to:

- (a) the number or frequency of similar breaches;
- (b) the impact of the breach on the participant’s ability to comply with any other Rule or Procedure or to conduct its business operations;
- (c) the extent to which the breach indicates that a participant’s arrangements to ensure compliance with the Rules and Procedures is inadequate;
- (d) the actual or potential financial loss to clients of the participant, or the participant itself, arising from the breach; and
- (e) any other matters specified by ASX from time to time.<sup>28</sup>

For these purposes, it is irrelevant that the breach may have been caused by a third party (such as a payment provider).

A participant is required to make an objective assessment of the significance of each and every breach (or a series of related breaches) including frequency and number of minor breaches (as these could be determined to be systemic in nature) in terms of determining whether it requires notification to ASX under these requirements. In making this determination, participants may find the guidance provided by ASIC in Regulatory Guide 78 *Breach reporting by AFS licensees* on the corresponding obligation to notify ASIC of significant breaches of various financial services laws<sup>29</sup> helpful.

For the avoidance of doubt, a one-off or infrequent breach may still be significant if it meets some or all of the criteria in (b) – (e) above.

### 4. Lodging notifications via ASX Online

All of the above notifications can be made online via the participant forms facility on ASX Online. ASX Online is a secure extranet site provided by ASX to facilitate (among other things) the electronic lodgement of compliance related notifications by participants to ASX Participants Compliance.

The notification functionality in the participant forms facility on ASX Online covers the ASX and ASX 24 markets and the ASX Clear, ASX Settlement and ASX Clear (Futures) clearing and settlement facilities. It enables participants of more than one market or facility to file a single notification across multiple rulebooks.

A list of the notifications that can be submitted to ASX via the participant forms facility on ASX Online and the relevant notification name is available online at:

<https://www.asxonline.com/content/dam/asxonline/public/documents/manuals/participant-notifications.pdf>

Instructions on how to use the participant forms facility on ASX Online are also available at:

<https://www.asxonline.com/content/dam/asxonline/public/documents/manuals/participant-forms-guide.pdf>

<sup>27</sup> See note 19 above and the accompanying text.

<sup>28</sup> ASX Clear (Futures) Operating Rule 4.11B.

<sup>29</sup> Section 912D of the Corporations Act.

### 5. Capital-related notifications

The monthly and ad hoc statements of financial position and annual returns that a futures or OTC non-bank clearing participant are required to provide to ASX under ASX Clear (Futures) Operating Rules 8.4 and 8.5(b) and OTC Rule 3.3(b)(ii)<sup>30</sup> are lodged via the ASX Return Lodgement and Monitoring (RLM) System, rather than the participant forms facility.<sup>31</sup>

RLM can be accessed via [ASX Online](#). Instructions on how to use RLM are available at:

[www.asxonline.com/content/dam/asxonline/public/documents/manuals/rlm-system-user-guide/rlm-system-user-guide.pdf](http://www.asxonline.com/content/dam/asxonline/public/documents/manuals/rlm-system-user-guide/rlm-system-user-guide.pdf)

In addition, a clearing participant is required to notify ASX immediately if:

- the value of its financial position at any time is less than 150% of the financial requirements;<sup>32</sup>
- the value of its financial position is less than 150% of the financial requirements<sup>33</sup> and has decreased by more than 20% since the last advice provided to ASX pursuant to ASX Clear (Futures) Operating Rule 8.5(a) or (b);<sup>34</sup>
- its financial position has varied such that it exceeds the position limits prescribed pursuant to ASX Clear (Futures) Operating Rule 9;<sup>35</sup> or
- its financial position has altered in such circumstances as are prescribed in the schedules.<sup>36</sup>

An OTC participant is required to notify ASX immediately if any of the financial circumstances set out in the OTC Handbook occur (if any such financial circumstances are set out in the OTC Handbook).<sup>37</sup>

Finally, a participant must notify any change to its financial year end to ASX within 10 business days of the change taking effect.<sup>38</sup>

These notifications are not made via ASX Online but rather should be made directly to the ASX Counterparty Risk Assessment team [via email to ~~on 1800 636 850~~ or CRAteam@asx.com.au](mailto:CRAteam@asx.com.au).

### 6. Business Continuity Plan (BCP) related notifications

A participant must notify ASX<sup>39</sup> of:

<sup>30</sup> Note that futures and OTC clearing participants that are banks are subject to prudential supervision imposed by the Australian Prudential Regulation Authority (in the case of Australian incorporated banks) or a foreign banking regulator (in the case of foreign banks) and, on that basis are able to obtain a waiver from the requirement to submit capital returns to ASX under ASX Clear (Futures) Operating Rules 8.4 and 8.5(b).

<sup>31</sup> Non-bank clearing participants that are also clearing participants of ASX Clear Pty Limited have been granted a waiver of ASX Clear (Futures) Operating Rule 8.4 and/or OTC Rule 3.3(b)(ii) exempting them from having to submit a monthly return, subject to certain conditions. Details of the waiver and conditions are available on ASX's website at <https://www.asx.com.au/documents/rules/201802b-asx-clear-futures-operating-rule-waivers.pdf>.

<sup>32</sup> ASX Clear (Futures) Operating Rule 8.5(a)(i). The financial requirements are net tangible assets of not less than five million dollars (\$5,000,000) and net liquid assets of an amount greater than zero (ASX Clear (Futures) Operating Rules Schedule 9 subsection 1.1). If the participant is an OTC participant it must have a minimum level of net tangible assets equal to fifty million dollars (\$50,000,000) unless it is an Australian Bank, in which case it must have a minimum tier 1 capital of fifty million dollars (\$50,000,000) (ASX Clear (Futures) OTC Rule 3.3(a)).

<sup>33</sup> See note [3234](#) above.

<sup>34</sup> ASX Clear (Futures) Operating Rule 8.5(a)(ii).

<sup>35</sup> ASX Clear (Futures) Operating Rule 8.5(a)(iii).

<sup>36</sup> ASX Clear (Futures) Operating Rule 8.5(a)(iv). Note, nothing is currently prescribed in the schedules.

<sup>37</sup> ASX Clear (Futures) OTC Rule 3.3(c).

<sup>38</sup> ASX Clear (Futures) Operating Rule 4.14(ab)(i).

<sup>39</sup> [ASX Clear \(Futures\) Guidance Note 10, Section 4.15](#)



- any disruption that causes the participant to engage its BCP for its ASX Clear (Futures) operations, as soon as reasonably practicable after it becomes aware of the disruption; and
- any significant outage impacting its ASX Clear (Futures) operations, as soon as it becomes apparent that there is or is likely to be a significant outage and regardless of whether it has engaged its BCP.

The above notifications should be made to the relevant departments within ASX either via phone call or email.<sup>40</sup>

All participants must also notify ASX of the following matters in writing<sup>41</sup>:

- immediately of any significant breach of, or non-compliance with, the disaster recovery and business continuity requirements in the ASX Clear (Futures) Operating Rules or Procedures (as interpreted in accordance with ASX Clear (Futures) Guidance Note 10)<sup>42</sup> using the 'Self Reporting including Significant Breach' form; and
- as soon as practicable after it has become aware of any fact or matter or intends to take any action that will or may affect its capacity to communicate reliably with the Exchange System<sup>43</sup> using the 'Capacity to Communicate with ASX' form.

Participants must notify ASX by email to [review.team@asx.com.au](mailto:review.team@asx.com.au) within 10 business days of the appointment and any subsequent departure of their nominated business continuity officer and any other primary business continuity contact.<sup>44</sup>

<sup>40</sup> The relevant ASX department may change depending on the nature of the disruption or outage. Participants should maintain an up to date list of key ASX contacts for this purpose.

<sup>41</sup> ASX's prescribed method for these notifications is via ASX Online.

<sup>42</sup> ASX Clear (Futures) Operating Rule 4.11B.

<sup>43</sup> ASX Clear (Futures) Operating Rule 4.14(o). "Exchange System" is defined in Part 01 of the ASX Clear (Futures) Operating Rules and means any system, including the clearing system, computer system or other electronic system (including the Licensed Software and the Exchange Equipment) utilised by ASX Clear (Futures) or any of its Related Bodies Corporate from time to time in connection with any business of ASX Clear (Futures) or any of its Related Bodies Corporate.

<sup>44</sup> ASX Clear (Futures) Guidance Note 10, Section 4.1 and Section 4.15.