



# Allocation of Investment Losses

**Consultation on proposed changes to the ASX Recovery Rules to allocate US settlement bank investment losses between the ASX CCPs and their clearing participants**

11 February 2022



## Invitation to comment

ASX is seeking submissions on the issues canvassed in this paper by Friday 25 March 2022.

Submissions should be sent to:  
samantha.hettihewa@asx.com.au

If you would like your submission, or any part of it, to be treated as confidential, please indicate this clearly. All submissions will be provided to regulators on request. They may also be published on the ASX website, unless they are clearly marked as confidential or ASX considers that there are reasons not to do so.

ASX is available to meet with interested parties for bilateral discussions on these matters.

## Contacts

For general enquiries, please contact:

**Samantha Hettihewa**

Senior Manager, Clearing Risk  
Policy & Management

T +61 (0)2 9277 0939

E

samantha.hettihewa@asx.com.au

Media enquiries, please contact:

**Mr David Park**

Senior Adviser, Media and  
Communications

T 02 9227 0010

E david.park@asx.com.au

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## Allocation of Investment Losses

### Consultation on proposed changes to the ASX Recovery Rules to allocate US settlement bank investment losses between the ASX CCPs and their clearing participants

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#### Introduction

This consultation paper covers changes to the ASX Recovery Rules and Handbook that ASX proposes to make to address the investment exposure of clearing participants of ASX Clear (Futures) (**ASXCLF**) and ASX Clear to US settlement banks arising from the inclusion of variation margin exposures in ASXCLF's overnight (2am) margin calls. The proposed amendments will ensure that only clearing participants of ASXCLF will be exposed to the insolvency of the US settlement banks and the extent of that exposure will depend on the three components outlined in this consultation paper. ASX's proposed approach to loss allocation recognises that: all ASXCLF clearing participants benefit from the overnight margin process; the mutualisation of settlement bank losses will avoid the risk of concentration of loss allocation to a small number of clearing participants; and there should be a 'user pays' element where clearing participants whose activities directly result in exposure incur a higher share of any loss. As a result, while all ASXCLF clearing participants will be exposed to a US settlement bank loss, those clearing participants that are in scope for overnight margining, and those clearing participants who have also paid USD funds to ASXCLF in the prior default fund commitment period will each bear a greater proportion of any loss.

ASX's proposed amendments to the ASX Recovery Rules outlined in this Consultation Paper are included as Attachment A.

This consultation paper seeks feedback from stakeholders on the proposed amendments to the ASX Recovery Rules and Handbook to implement these changes. Subject to consultation feedback and regulatory clearance, it is expected that the amendments to the ASX Recovery Rules and Handbook will be implemented by the end of Q2 2022.

Responses to this Consultation Paper should be submitted to ASX by Friday 25 March 2022.

#### Proposed Amendments to the ASX Recovery Rules and Handbook

##### Background

In response to a recommendation in the RBA's FY20 FSS Assessment, ASXCLF is looking to extend the scope of its existing overnight margin process to include calling collateral to cover mark-to-mark (i.e. variation margin type) exposures. However, using the existing overnight margin process to call USD cash collateral to cover the variation margin/mark-to-market exposures will increase the investment exposure to the US settlement banks used to hold the USD cash collateral called (this USD cash collateral is returned to clearing participants once the subsequent 8am AUD intra-day margin run (which incorporates exposures at 2am) is settled).

Under the existing ASX Recovery Rules, any investment loss in excess of \$75m is allocated to clearing participants across both ASX CCPs pro rata based on total funds paid to the ASX CCP without regard to currency. This reflects that ASX has set aside \$75m of its own capital to cover losses associated with the default of an investment counterparty. Investment limits for US Settlement banks (which are set as part of the ASX Clearing Corporation (**ASXCC**) Investment Mandate) have also been set at \$75m in line with other limits for Authorised Deposit Taking Institutions. Consequently, there has been no potential for an investment loss to exceed \$75m.

However, with the inclusion of variation margin/mark-to-market exposures in the 2am margin calculation, investment limits for each US settlement bank are being increased to higher amounts to accommodate the potentially larger margin calls. This will mean that clearing participants will be liable for any investment losses incurred on settlement

bank exposures greater than \$75m up to the amount of the limit. Limits will be reviewed annually in line with the annual review of the ASXCC Investment Mandate and communicated to clearing participants via the Risk Consultative Committees.

Under the existing Recovery Rules, setting settlement bank limits greater than \$75m has the unintended consequence that clearing participants of ASX Clear will be exposed to the risk of US settlement bank insolvency even though they do not pay margins in USD.

The existing rules also mean that the sole determinant of the amount of any USD settlement bank loss allocated to a clearing participant is its relative share of total cash collateral lodged by participants **across all currencies** at the time of default by the US settlement bank. This means that a clearing participant lodging significant amounts of non-cash collateral to meet its AUD Initial Margin obligations would have a lower loss allocation notwithstanding the lack of any link between this AUD collateral choice and the amount of the USD settlement bank loss. It also means that clearing participants do not know at any point in time their percentage share of any USD settlement bank losses.

### Proposed approach

Under the proposed approach, the allocation of USD settlement bank losses will be restricted to ASXCLF clearing participants. However, an ASXCLF clearing participant which is in default when losses are being allocated will not be allocated any of these losses (so as to ensure that the collateral held from that participant is fully available to cover potential losses incurred by ASXCLF in closing out the defaulting participants positions). Each clearing participant's share of loss will be made up of three components each with its own weighting - details of each component are set out in the table below. The weightings allocated to each component are intended to achieve an approximate equivalence between:

- **Mutualisation** given that all clearing participants benefit from the overnight margin process - Component 1 and Component 2 (part)
- **"User pays"** where clearing participants whose activities have or could result in USD settlement bank exposures incur a higher share of any loss - Component 2 (part) and Component 3

The weightings are intended to avoid the risk of concentration of loss allocation to a small number of clearing participants – they also provide a benefit to clearing participants within the scope of the overnight margin process who reduce the amount of risk to USD settlement banks through the use of non-cash collateral and/or maintaining an additional AUD buffer.

Component	Objective & Scope	Weighting	Rationale and calculation
1: Clearing participant's Default Fund contribution as a % of total contribution from all clearing participants	<p><b>Objective:</b> Mutualisation</p> <p><b>Scope:</b> All ASXCLF clearing participants irrespective of whether they are within the scope of the 2am call</p>	40%	<p>All clearing participants benefit from the overnight margin process as it reduces exposures to (and default losses from) clearing participants within the scope of the process. Therefore all clearing participants should bear some element of any USD settlement bank loss.</p> <p>Calculation uses actual Default Fund contribution except OTC contributions which are scaled/reduced by reference to OTC/ETD margin ratio for the 3 month period used to size the ETD contributions. This use of an adjusted OTC contribution is intended to reflect the order of magnitude difference between exposures from ETD vs OTC to avoid a disproportionate allocation to OTC clearing participants.<sup>1</sup></p> <p>There is no specific recognition (other than the impact on the averages used in Component 3 below) if a clearing participant which is within the scope of the overnight margin process provides non-cash collateral.</p>
2 – Clearing participant's Default Fund contribution as a % of total contributions from clearing participants within the scope of 2am call	<p><b>Objective:</b> Mutualisation &amp; “(Potential) User pays”</p> <p><b>Scope:</b> Applies to only those clearing participants who are within the scope of the overnight margin process.</p> <p>Note: Inclusion within the scope is based on the materiality of the exposures and activity of the individual clearing participants.</p>	20%	<p>All clearing participants which are within the scope of the overnight margin process <b>may</b> have positions which result (via the 2am call) in USD settlement bank exposures. Their loss allocation should reflect this <b>potential</b> exposure. Actual exposures from clearing participants are reflected in Component 3 below.</p> <p>OTC contributions are adjusted as per Component 1.</p> <p>(Note: The more participants that are included in the scope of the overnight margin process, the more this Component 2 converges with Component 1. If all clearing participants are in scope, then the distinction being made in this Component between Mutualisation and “User pays” effectively disappears and this Component is a Mutualisation component).</p> <p>With the introduction of the enhanced overnight margin process to include VM/MtM exposures, 13 out of the 16 ETD clearing participants will be within scope – these 13 include 4 of the 8 OTC clearing participants.</p>
3: Average USD cash called over previous 3 months as a % of the total average USD cash called over the previous 3 months.	<p><b>Objective:</b> Mutualisation &amp; “(Actual) User pays”</p> <p><b>Scope:</b> Applies to all clearing participants who have actually paid USD</p>	40%	<p>An element of the loss allocation should reflect the extent to which an individual clearing participant has actually paid USD cash during the quarter. Any such amounts are a function both of the “random” distribution of VM/MtM across clearing participants as well as any steps taken by individual participants to</p>

<sup>1</sup> During Q2 FY2022, average Initial Margin from OTC clearing participants of \$0.44bn amounted to only 5% of average Initial Margin of \$8.1bn from ETD clearing participants – equal amounts of default fund contributions of \$100m were held from both OTC clearing participants and ETD clearing participants.

Component	Objective & Scope	Weighting	Rationale and calculation
	cash in the previous quarter. This calculation will align with the quarter used to determine participants Default Fund contributions.		reduce the size of their USD cash call (for example by providing non USD cash collateral). Calculation is based on 3 month average USD cash provided rather than at the point of USD settlement bank default – this is to avoid possibility of unrepresentative allocations.

Each clearing participant’s percentage share of settlement losses will be calculated every three months and fixed until the next three month calculation (in a similar way to the calculation of clearing participants default fund contributions and using the same three month period). Each clearing participant will be advised of its percentage share once calculated as well as the ASXCLF USD settlement bank limits in place - this will allow each participant to calculate the maximum dollar amount of potential losses it could be allocated (assuming there is no clearing participant in default at the time of loss allocation).

#### Proposed approach to disclosing loss allocation to clients

In the event of a US settlement bank insolvency, ASX proposes to allocate a clearing participant’s portion of any resulting investment loss pro rata amongst its accounts (House and Client) provided that overnight margin monies (if any) across those accounts will be reduced before AUD funds. This approach is consistent with the existing rules framework that applies to the allocation of investment losses. However, ASX is mindful that setting US settlement bank limits greater than \$75m has the consequence that clients of ASXCLF clearing participants are exposed to the risk of US settlement bank insolvency and resulting losses. Accordingly, to ensure appropriate disclosure of this risk to clients, ASX proposes to: publish a ‘Client Fact Sheet’ on its website setting out the investment loss allocation process; and require clearing participants to provide their clients (i.e. immediate clients with whom the clearing participant has a client agreement) with, or direct their clients to, a copy of that Client Fact Sheet.

#### Other proposed amendments

ASX also proposes to take this opportunity to confirm that if there is an investment loss in circumstances where the investment limits approved by the ASX CCPs have been materially exceeded, clearing participants will bear the loss above \$75m but only up to the approved investment limits and the ASX CCPs will bear any loss above the approved investment limits.

ASX does not propose to make any changes to the existing loss allocation rules that would apply if multiple Investment Defaults occurred. If losses arose from one or more related Investment Defaults then the ASX contribution cap of \$75m would apply across those related investment defaults (refer Recovery Rule 6.2). For example, if the default of one US settlement bank caused the default of another US settlement bank, or if the default of two US settlement banks arose out of the same set of circumstances, then ASXCC might determine that these were related Investment Defaults and the ASX contribution cap of \$75m would apply across the aggregate of the losses arising from both Investment Defaults rather than to each Investment Default. Exactly how the loss allocation rules will apply in an investment loss scenario will depend on the particular facts.

#### Key ASX Recovery Rule and Handbook Amendments

##### Rule 6.2 (Investment Default, Investment Default Declaration and Investment Loss)

The proposed amendments clarify that:

- even if there is an event of non-compliance there may still be a default declaration in respect of losses arising from that event.
- if there is an investment loss in circumstances where the investment limits approved by the ASX CCPs have been materially exceeded, clearing participants will bear the loss above \$75m but up to the approved investment limits and the ASX CCPs will bear any loss above the approved investment limits.

#### **Rule 6.3 (ASX CCP Investment Loss and Participant Investment Loss)**

The proposed amendments provide that where an investment loss arises from the investment of USD overnight margin monies then the investment loss will be allocated to ASXCLF only (rather than both ASX CCPs) and then, in turn, to ASXCLF clearing participants that are not in default at the time of allocation based on three factors. First, 40% of the investment loss will be allocated across all clearing participants based on their adjusted default fund contribution as last notified by ASXCLF. Second, 20% of the investment loss will be allocated across clearing participants that are within scope of the overnight margin process based on their adjusted default fund contribution as last notified by ASXCLF. Third, the remaining 40% of the investment loss will be allocated to clearing participants based on the average USD cash margin paid by the clearing participant to ASX Clear (Futures) in the prior default fund contribution period. A clearing participant's allocated loss will be its 'Participant OM Investment Loss'. A clearing participant that is in default at the time of allocation will not be allocated a 'Participant OM Investment Loss'.

#### **Rule 6.4 (Allocation to Participant Investment Loss)**

The proposed amendments provide that ASXCLF will allocate the clearing participant's Participant OM Investment Loss pro rata amongst its accounts (House and Client) provided that overnight margin monies (if any) across those accounts will be reduced before AUD funds. An account cannot be reduced to less than zero. Accordingly, if a Participant OM Investment Loss is greater than the total funds held by ASXCLF for the clearing participant as at the time of the Investment Default Declaration then the remaining portion of the OM Investment Loss will be reallocated among the other clearing participants of ASXCLF with available funds in accordance with the rules governing the original allocation. ASXCLF will notify a clearing participant of its Participant OM Investment Loss and the allocation between its relevant accounts. When ASXCLF returns USD overnight margin monies to a clearing participant it will be less the Participant OM Investment Loss allocated to the clearing participant. If ASXCLF reduces the AUD funds held for a clearing participant to meet the Participant OM Investment Loss, the clearing participant will be required to reinstate those funds on or before the next business day.

The proposed amendments require clearing participants of ASX Clear (Futures) to provide new and existing clients (i.e. immediate clients with whom the clearing participant has a client agreement) with, or direct their clients to, a copy of an Investment Loss Fact Sheet that will be published on ASX's website.

#### **Rule 6.5 (Reimbursement of Recovered Amounts)**

The proposed amendments provide that if ASXCLF subsequently recovers an amount of an investment loss attributable to USD overnight margining then it will reimburse clearing participants who were allocated a Participant OM Investment Loss on a pro rata basis.

#### **ASX Recovery Handbook: Rule 6.4 (Allocation to Participant Investment Loss)**

The proposed amendments to the ASX Recovery Handbook align the title of the procedure with the corresponding amendments to Rule 6.4. This will apply to AUD reductions that are made by ASX Clear (Futures) to satisfy a Participant OM Investment Loss.



## Next Steps

ASX seeks stakeholders' view on the draft amendments to the ASX Recovery Rules. Submissions should be made by Friday 25 March 2022.

ASX welcomes the opportunity to discuss the draft amendments with interested parties (refer to the contact details on page 2).

## ASX RECOVERY RULES

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### SECTION 6 ALLOCATION OF INVESTMENT LOSSES

#### 6.1 ASX Investments and ASX Clearing Corporation

Investments of funds received by ASX Clear and ASX Clear (Futures) are made by ASX Clearing Corporation Limited (referred to as **ASX Clearing Corporation**). These investments are referred to in this Rule 6 as **ASX Investments**.

#### 6.2 Investment Default, Investment Default Declaration and Investment Loss

Either of the following is an **Investment Default**:

- (a) the insolvency or default of the issuer of an ASX Investment, or the counterparty to ASX Clearing Corporation in respect of the ASX Investment. In the case of an ASX Investment which is a deposit, this includes the deposit-taking institution; or
- (b) a loss which has been recognised with respect to, or other recognised diminution in value of, an ASX Investment (including such loss or diminution which arises in connection with a restructuring or similar event which occurs in respect of the ASX Investment),

except to the extent that is a direct result of:

- (i) the fraud of ASX Clear, ASX Clear (Futures) or ASX Clearing Corporation; or
- (ii) a material non-compliance by the ASX CCP with its investment policy. For the avoidance of doubt, a material non-compliance by the ASX CCP with its investment policy does not preclude the occurrence of an Investment Default.

If an Investment Default occurs, then ASX Clearing Corporation may declare that an Investment Default has occurred (referred to as an **Investment Default Declaration**) and determine, in its reasonable discretion, that a loss has been caused by or arises out of that Investment Default.

If ASX Clearing Corporation determines that the aggregate amount of losses following one or more related Investment Defaults (as determined by ASX Clearing Corporation in its reasonable discretion) is in excess of A\$75 million (referred to as the **Investment Loss Threshold**) then the amount of that excess (as determined by ASX Clearing Corporation) is the **Investment Loss** in respect of those Investment Defaults. For the purpose of determining the amount of an Investment Loss, if the ASX CCP has materially exceeded investment limits that it has approved in accordance with its investment policy then ASX Clearing Corporation must disregard losses to the extent that they exceed those approved investment limits.

Each ASX CCP will review the Investment Loss Threshold on at least an annual basis and, will consult with the Risk Committee in relation to any proposed changes in accordance with the ASX CCP Rules.

### 6.3 Allocation of Investment Loss to Participants~~SX CCP Investment Loss and Participant Investment Loss~~

Each Investment Loss is to be allocated to each Participant in the following way:

- (a) ASX Clearing Corporation is to allocate an amount of the Investment Loss to the ASX CCP. This is to be determined on the basis of ASX Clearing Corporation's calculation of the interest which the ASX CCP holds in the total amount of ASX Investments. The amount so allocated to the ASX CCP is the **ASX CCP Investment Loss**; and
- (b) the ASX CCP is to allocate the ASX CCP Investment Loss which has been allocated to it to each Participant as at the time of the Investment Default Declaration. This allocation is to be determined on the basis of the ASX CCP's calculation of the amount representing funds which the Participant has paid to the ASX CCP in accordance with the Rules (including Participant Commitment, margin and excess cash) and which has been invested in ASX Investments as at the time of the Investment Default Declaration. The amount so allocated to a Participant in this manner is the **Participant Investment Loss**.

provided that any Investment Loss incurred on an ASX Investment of Overnight Margin Monies, is to be allocated to each Participant that is not in Default at the time of the allocation in the following way:

- (c) ASX Clearing Corporation is to allocate the Investment Loss to ASX Clear (Futures). The amount so allocated to ASX Clear (Futures) is the **ASXCLF OM Investment Loss**; and
- (d) ASX Clear (Futures) is to allocate the ASXCLF OM Investment Loss to each Participant that is not in Default at the time of the allocation as follows:
  - (i) 40 per cent of the ASXCLF OM Investment Loss is to be allocated in proportion to the Participant's Adjusted Commitment;
  - (ii) 20 per cent of the ASXCLF OM Investment Loss is to be allocated only to those Participants that ASX Clear (Futures) has notified prior to the Investment Default are in scope to pay Overnight Margin Monies to ASX Clear (Futures) in proportion to the Participant's Adjusted Commitment; and
  - (iii) 40 per cent of the ASXCLF OM Investment Loss is to be allocated based on the total average Overnight Margin Monies paid by the Participant in the Calculation Period in respect of which the Participant's Adjusted Commitment was calculated.

The amount so allocated to a Participant in this manner is the **Participant OM Investment Loss**.

The determination of these amounts is final and binding on the Participant, absent manifest error.

For the purpose of this Rule 6:

(e) "Overnight Margin Monies" means cash margin paid in United States Dollars to ASX Clear (Futures) in accordance with its overnight margining process;

(f) "Adjusted Commitment" means for a Futures Participant, that Participant's Futures Commitment as last notified to the Participant by ASX Clear (Futures) and

for an OTC Participant that Participant's OTC Commitment as last notified to the Participant by ASX Clear (Futures) adjusted by reference to the OTC/Futures margin ratio for the Calculation Period used to size the Futures Commitment.

#### 6.4 **Allocation of Participant loss between Accounts to Participant Investment Loss**

The ASX CCP is to allocate the Participant Investment Loss for a Participant amongst the amounts representing funds which that Participant has paid to the ASX CCP in accordance with the Rules (including Participant Commitment, margin and excess cash) and which has been invested in ASX Investments as at the time of the Investment Default Declaration on a pro-rata basis across its relevant Accounts (including any Client Accounts). ASX Clear (Futures) is to allocate the Participant OM Investment Loss for a Participant across the Participant's Accounts (including any Client Accounts) on a pro rata basis, provided that such loss is allocated first to the Overnight Margin Monies (if any) paid by the Participant to ASX Clear (Futures) in respect of those Accounts and then to the amounts representing all other funds which the Participant has paid to ASX Clear (Futures) (including Participant Commitment, margin other than Overnight Margin Monies and excess cash) in accordance with the Rules and which has been invested in ASX Investments as at the time of the Investment Default Declaration. For these purposes ASX Clear (Futures) will use the exchange rate of the foreign currency transaction it has entered into (or the average rate of such transactions if there are more than one) in connection with the allocation of the Participant OM Investment Loss.

Each such amount is immediately reduced by the amount so allocated to it provided that no amount can be reduced to less than zero. If the amount of a Participant's Participant OM Investment Loss is greater than the funds (including Overnight Margin Monies) the Participant has paid to ASX Clear (Futures) and which have been invested in ASX Investments as at the time of the Investment Default Declaration, then the residual portion of the Participant's Participant OM Investment Loss will be reallocated among the other Participants of ASX Clear (Futures) with available funds in accordance with Rule 6.3.

With respect to a Participant Investment Loss or a Participant OM Investment Loss, the Participant is to reinstate the amount of such a reduction (other than a reduction in Overnight Margin Monies) on or before the next Business Day in the manner specified in the Recovery Handbook.

The ASX CCP will notify each Participant of its Participant Investment Loss or Participant OM Investment Loss and the allocation of such Participant Investment Loss or Participant OM Investment Loss across each of its relevant Accounts. However, a failure to provide such a notification does not affect the allocation of the Participant Investment Loss or Participant OM Investment Loss for a Participant in accordance with this Rule 6.4.

A Participant of ASX Clear (Futures) must provide each Client with, or direct each Client to, a copy of the Investment Loss Fact Sheet, in accordance with the Procedures.

#### 6.5 **Reimbursement of Recovered Amounts**

If the ASX CCP exercises its powers under this Rule 6 in respect of an Investment Default and the ASX CCP subsequently recovers an amount in respect of any ASX Investment which was the subject of the Investment Default, then the amount

recovered, less any costs and expenses incurred by either the ASX CCP or ASX Clearing Corporation in connection with the recovery, is the **Recovered Amount** for that Investment Default.

The ASX CCP must use the Recovered Amount in respect of an Investment Default to reimburse the Participants which suffered a reduction in the amount representing funds which the Participants have paid to the ASX CCP in accordance with the Rules (including Participant Commitment, margin including Overnight Margin Monies or excess cash) because of their Participant Investment Loss or Participant OM Investment Loss with respect to that Investment Default. This is to be reimbursed (by the means which the ASX CCP decides is appropriate) pro rata to those Participants up to the amount of the relevant reduction. Participants will be reimbursed up to the amount of the relevant reductions prior to the ASX CCP being reimbursed for any losses incurred in connection with the relevant Investment Defaults (excluding any costs and expenses incurred by the ASX CCP in connection with the applicable Investment Defaults).

However, the ASX CCP is not required to account to any Participant for any amount which is necessary to discharge any other overdue debt obligation of the Participant to the ASX CCP at that time.

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## ASX RECOVERY HANDBOOK

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### SECTION 6 ALLOCATION OF INVESTMENT LOSSES

#### 6.4 Allocation of Participant loss between Accounts to Participant Investment Loss

For the purpose of a Participant reinstating the amount of a reduction which has occurred in accordance with Rule 6 (Allocation of investment Losses), a Participant must pay the amount to be reinstated via a Cash Payment transaction in Austraclear which must be at the “Settled” state at the same time as applies in respect of payments of margin payable on that day or as otherwise required by the ASX CCP.

Upon commencement of the ASXCLF OM Investment Loss rules, a Participant of ASX Clear (Futures) must provide each new Client with, or direct the new Client to, a copy of the Investment Loss Fact Sheet, before the Participant holds an Open Position for that Client.

Within three months of the commencement of the ASXCLF OM Investment Loss rules, a Participant of ASX Clear (Futures) must provide each existing Client with, or direct the existing Client to, a copy of the Investment Loss Fact Sheet.

ASX Clear (Futures) may require a Participant to attest annually that it has provided the Investment Loss Fact Sheet to its Clients in accordance with the Rules and Procedures.

For the purpose of Rule 6.4 and this Procedure, the term “Investment Loss Fact Sheet” refers to the document entitled “Investment Loss Fact Sheet” published on the ASX website as amended by ASX Clear (Futures) from time to time.

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