

ASX CLEAR (FUTURES) - NOVATION

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This document seeks to explain how and when novation occurs as well as when a novated transaction may cease being novated.¹

Novation

Counterparties to a Market Contract² or OTC Transaction have exposure to each other until novation occurs in respect of that contract or transaction.

For Market Contracts, novation represents the replacement of a Market Contract between a Buyer and Seller with two separate Open Contracts between ASX Clear (Futures) and each clearing participant for that contract and in some circumstances the underlying client.³ For OTC Transactions, novation represents the replacement of an OTC Transaction between two counterparties with two separate OTC Open Contracts between ASX Clear (Futures), each OTC Participant and in some circumstances the underlying client or an OTC Affiliate.⁴

As a result, ASX Clear (Futures) becomes the seller to every buying clearing participant and the buyer to every selling clearing participant under each Open Contract or OTC Open Contract, and in that capacity is responsible to that counterparty for completion.⁵

Requirements for Novation

Market Contracts (excluding OTC Transactions)

Market Contracts must be presented and registered with ASX Clear (Futures) to be novated. A Market Contract is deemed to be presented and registered with ASX Clear (Futures) if it *has been recorded by ASX 24* in the manner prescribed in the ASX Clear (Futures) Operating Rules.⁶

ASX Clear (Futures) has the right to decline to register a Market Contract or impose conditions on such registration in certain circumstances.⁷

¹ This summary information is provided for guidance only and should be read in conjunction with the ASX Clear (Futures) Operating Rules, including the OTC Rules. It does not replace or vary those Operating Rules. Capitalised terms used in this document have the meaning given to them in the ASX Clear (Futures) Operating Rules or OTC Rules (as applicable).

² Please note the definition of "Market Contract" under the ASX Clear (Futures) Operating Rules includes ASX 24 Exchange Traded Derivatives alongside Bond Transactions and Repurchase Agreements. However, as ASX Clear (Futures) does not currently clear Bond Transactions and Repurchase Agreements this, document does not address how and when novation occurs for these types of transactions.

³ ASX Clear (Futures) Operating Rules 31.3 and 31.4. For certain types of Open Contracts traded on ASX 24, a CPM Client (being a client to which the Client Protection Model Provisions apply) may also be a party to the Open Contract (see ASX Clear (Futures) Operating Rule 113.1)

⁴ OTC Rule 4.6. For certain types of OTC Open Contracts, a CPM Client (being a client to which the Client Protection Model Provisions apply) or OTC Affiliate (being a Related Body Corporate of an OTC Participant approved by ASX Clear (Futures)) may also be a party to the OTC Open Contract (see OTC Rule 4.6).

⁵ Note that a CPM Client and OTC Affiliate also have rights and entitlements against ASX Clear (Futures) as a party to the Open Contract or OTC Open Contract (see ASX Clear (Futures) Operating Rule 113.2 and OTC Rule 4.2A).

⁶ Refer to ASX Clear (Futures) Operating Rules 31.1(a), 31.1(d) and 31.6 and Schedule 1. This applies to Market Contracts that were traded on the ASX 24 Trading Platform and to Market Contracts that were not traded on the ASX 24 Trading Platform but were otherwise executed in accordance with the ASX 24 Operating Rules (see paragraph (a) of the definition of Market Contract in ASX Clear (Futures) Operating Rule 1.1).

⁷ ASX Clear (Futures) Operating Rule 31.2.

OTC Transactions

For an OTC Transaction to be novated, it must be:

- presented to ASX Clear (Futures) for registration⁸ in an acceptable message format using an Approved Trade Source System in accordance with the OTC Rules;⁹
- eligible to be accepted for registration by ASX Clear (Futures), including by satisfying the OTC Eligibility Criteria set out in the OTC Rules and OTC Handbook;¹⁰ and
- if the OTC Transaction is submitted for registration by an OTC Affiliate or CPM Client, its OTC Participant has consented to the registration, or is taken to have consented to the registration, in accordance with the OTC Handbook¹¹.

When Novation Occurs

Market Contracts (excluding OTC Transactions)

For Market Contracts which meet the above requirements for novation, the ASX Clear (Futures) Operating Rules deem the novation of such transactions as having taken effect when the transaction is recorded by ASX 24¹², which will occur:

- for transactions traded on the ASX 24 Trading Platform, upon the ASX 24 Trading Platform producing a matched trade record of the Trade;¹³ or
- for transactions that were not traded on the ASX 24 Trading Platform, upon being submitted to and accepted for registration by ASX Clear (Futures).¹⁴

OTC Transactions

For OTC Transactions which meet the above requirements for novation, the OTC Rules deem the novation of such transactions as having taken effect from the time ASX Clear (Futures) received the submission for registration.¹⁵

⁸ The persons authorised to submit OTC Transactions for registration are OTC Participants, or an OTC Affiliate or CPM Client if an OTC Participant has consented to registration (see OTC Rule 4.3).

⁹ OTC Rule 4.3.

¹⁰ See OTC Rule 4.5 and 4.11, and OTC Handbook Rule 4.5, 4.11 and Schedule 1. ASX Clear (Futures) also has discretion to register an OTC Transaction even if it does not meet all the eligibility requirements for registration (see OTC Rule 4.5).

¹¹ See OTC Rule 4.3. An OTC Participant is taken to have consented to the registration of an OTC Transaction submitted by its OTC Affiliate or CPM Client if a Credit Token is attached to the transaction at the time of submission or a Consent Message is subsequently provided to ASX Clear (Futures) in response to a request for consent in accordance with the OTC Handbook (see OTC Rule 4.3 and OTC Handbook 4.3). An OTC Participant will also be taken to have consented to the registration of an OTC Transaction submitted by its OTC Affiliate where the OTC Participant has not notified ASX Clear (Futures) of a Credit Token Issuer or Consent Provider applicable to the OTC Affiliate (see OTC Handbook 4.3).

¹² A Market Contract will be recorded by ASX 24 on the day on which the contract is traded or in the case of trades effected after the Close of Trading, on the next Business Day (see ASX Clear (Futures) Operating Rules 1.1 (definition of "Recorded by the Exchange").

¹³ ASX Clear (Futures) Operating Rules 1.1 (definition of "Recorded by the Exchange"), 31.1(a), 31.3, Part 3(a) and Part 5 of Schedule 1 under heading "Australian Securities Exchange Limited (Exchange)". Novation may occur at an earlier time for Market Contracts that have been confirmed as being allocated in accordance with the ASX 24 Operating Rules (see ASX Clear (Futures) Operating Rule 31.1(c)).

¹⁴ ASX Clear (Futures) Operating Rules 1.1 (definition of "Recorded by the Exchange"), 31.1(a), 31.3, Part 3(b) and Part 5 of Schedule 1 under heading "Australian Securities Exchange Limited (Exchange)". A clearing participant can identify whether a Market Contract has been submitted to and accepted for registration by ASX Clear (Futures), as it will be recorded in the Genium clearing system.

¹⁵ OTC Rules 4.5 and 4.6, and OTC Handbook Rule 4.5(e). An OTC Participant can identify whether ASX Clear (Futures) has received the submission for registration of an OTC Transaction, as it will have a "cleared" status in the ASX OTC clearing system.

When Novation May Cease

In certain circumstances, ASX Clear (Futures) can be relieved of its obligations in respect of Open Contracts and OTC Open Contracts. This includes in the case of:

- a Market Contract (other than an OTC Transaction) which gave rise to an Open Contract, if it was:
 - o entered into fraudulently by the clearing participant or the original Buyer or Seller to the Market Contract; or
 - o to the knowledge of the clearing participant or such other party to the Market Contract, entered into with an intention by one or both parties to Default; or
 - o otherwise not entered into in a bona fide manner by the clearing participant or such other party¹⁶; and
- an Open Contract or OTC Open Contract, where there is an emergency or force majeure situation, and ASX Clear (Futures) determines to take such action that is deemed necessary to deal with the emergency or force majeure.¹⁷

¹⁶ ASX Clear (Futures) Operating Rule 31.7.

¹⁷ ASX Clear (Futures) Operating Rules 81.1, 81.2 and 82.1(e). OTC Rule 7.1 provides that Part 8 of the ASX Clear (Futures) Operating Rules applies to OTC clearing. Some examples of emergency or force majeure situations include:

- physical emergencies that may affect the physical functions of ASX Clear (Futures), eg in the event of fire, power failure or flood;
- market emergencies where an undesirable situation or practice is developing or developed that ASX Clear (Futures) considers is contrary to the maintenance of a fair and orderly market (which includes the ASX 24 market or markets relevant to recipients of services provided by ASX Clear (Futures)); or
- where the business of ASX Clear (Futures) is materially adversely affected for any reason, such that it is unable to properly conduct its business in whole or in part, which could include unavailability of data processing or bank clearance systems, communication breakdown or other accident.