

## RESIGNING A PARTICIPATION

<p><b>The purpose of this Guidance Note</b></p>	<ul style="list-style-type: none"> <li>To assist participants who wish to resign their participation in ASX Clear to understand the process involved</li> </ul>
<p><b>The main points it covers</b></p>	<ul style="list-style-type: none"> <li>Requirements to resign a participation</li> <li>ASX's requirement for the participant to have a plan for the orderly winding down of its activities as a participant</li> <li>Issues that a participant should address in such a plan</li> </ul>
<p><b>Related materials you should read</b></p>	<ul style="list-style-type: none"> <li>ASX Clear Operating Rules Guidance Note 3 <i>Changes in Participation</i></li> </ul>

**History:** Guidance Note 2 amended 25/03/2019. Previous versions of this Guidance Note were issued in 03/14, 06/15 and 10/15.

**Important notice:** ASX has published this Guidance Note to assist participants to understand and comply with their obligations under the ASX Clear Operating Rules. It sets out ASX's interpretation of the ASX Clear 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 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

This Guidance Note is published to assist participants who wish to resign their participation in the ASX Clear clearing and settlement facility to understand the process involved.<sup>1</sup>

## 2. Requirements to resign a participation

A participant wishing to resign its participation in ASX Clear must.

- give at least 20 business days' written notice to ASX Clear Pty Limited (ASX) of its intention to resign and the proposed date of resignation and deliver a copy of that notice to each approved market operator in respect of which the participant is authorised to clear market transactions;
- satisfy ASX that it has taken, or will have taken before the proposed date of resignation, proper steps for the orderly winding down of its business in respect of ASX Clear;
- not enter into, or have the clearing obligations for, or accept allocation of, any market transaction; and
- comply with any reasonable direction of ASX in relation to the orderly winding down of its business in respect of ASX Clear.<sup>2</sup>

A participant resigning its participation in ASX Clear and in another ASX market or clearing and settlement facility can do so in a single notice of resignation, provided it complies with all of the relevant requirements in the Operating Rules for each such market and/or clearing and settlement facility.

## 3. Resignation notice not effective until accepted by ASX

A participant's resignation notice is not effective until the notice is accepted by ASX in writing.<sup>3</sup>

ASX will only accept a participant's resignation notice when the participant:

- has complied with all of the requirements mentioned under heading 2 above;
- has no remaining market transactions registered in its name and no remaining clearing obligations in relation to relevant market transactions; and
- has satisfied all its obligations to ASX, including having paid all outstanding fees and amounts owing by the participant under the ASX Clear Operating Rules.<sup>4</sup>

<sup>1</sup> Guidance Note 3 *Changes in Participation* has guidance for participants who wish to cease clearing transactions of an approved market operator under ASX Clear Operating Rule 3.10.1.

<sup>2</sup> ASX Clear Operating Rule 3.10.2.

<sup>3</sup> ASX Clear Operating Rule 3.10.3 opening paragraph.

<sup>4</sup> ASX Clear Operating Rule 3.10.3 paragraphs (a)-(d).

Otherwise, ASX will not unreasonably refuse to accept a participant's resignation notice.<sup>5</sup>

ASX will notify a participant when it has accepted the participant's resignation notice.<sup>6</sup> Until that happens, the participant is obliged to comply with all of its obligations under the ASX Clear Operating Rules.<sup>7</sup>

The acceptance by ASX of a participant's resignation notice does not affect any accrued rights which ASX, its related bodies corporate or other clearing participants have against the participant or any accrued obligations which the participant has to ASX, its related bodies corporate or other clearing participants.<sup>8</sup>

#### 4. The requirement for an orderly wind-down plan

As mentioned above, a participant wishing to resign its participation in ASX Clear must satisfy ASX that it has taken, or will have taken before the proposed date of resignation, proper steps for the orderly winding down of its activities as a participant.

Where a participant has already wound down its activities as a participant and is effectively inactive, it need merely state that fact in its resignation notice.

Otherwise, the participant should include with its resignation notice a detailed plan outlining the key dates and milestones for the orderly winding down of its business. The plan should cover:

- the proposed date of resignation;
- how the participant will continue to supervise its business and comply with its obligations under the ASX Clear Operating Rules up to the date of resignation;
- details of the intended communications with clients about its resignation;
- details of the participant's plans for closing out open positions, or migrating open positions and collateral, so that by the close of business on the proposed date of resignation, it has no remaining market transactions registered in its name and no remaining clearing obligations in relation to relevant market transactions;
- if the participant is a settlement participant with sponsored holdings in ASX Settlement and it is also resigning that participation, how and to whom the participant intends to migrate those holdings; and
- details of any other steps the participant intends to take to minimise any potential impact its resignation may have on clients.

A participant resigning its participation in ASX Clear and in another ASX market or clearing and settlement facility at the same time should ensure that the plan addresses all of the relevant requirements in the Operating Rules for each such market and/or clearing and settlement facility.

#### 5. Issues to consider in an orderly wind-down plan

In formulating its orderly wind-down plan, a participant should have regard to the following issues that commonly arise in the context of participants resigning:

- Where the participant is a clearing participant for derivatives in ASX Clear, it should be able to novate its derivative client agreements to another clearing participant via a 'participant change notice'.<sup>9</sup> However, the client must be given 20 business days' notice of the intended novation and the novation will not take effect

<sup>5</sup> ASX Clear Operating Rule 3.10.3 concluding paragraph.

<sup>6</sup> ASX Clear Operating Rule 3.10.4.

<sup>7</sup> ASX Clear Operating Rule 3.13.1.

<sup>8</sup> ASX Clear Operating Rule 3.13.1.

<sup>9</sup> This is a required minimum term for a derivatives client agreement under ASX Clear Operating Rule Schedule 5 clause S5.16. The prescribed form of participant change notice is set out in ASX Clear Operating Rule Schedule 6.

until the client has received a notice from the new clearing participant confirming that it consents to acting as the client's clearing participant.<sup>10</sup> Where applicable, these notice requirements need to be factored into the participant's orderly wind-down plan. The participant should also note that it will have to pass across the originals or copies of, or otherwise provide access to, any novated derivatives client agreements to the new clearing participant.<sup>11</sup>

- ASX has a standard tripartite agreement to facilitate the bulk transfer of derivatives positions from one participant to another.<sup>12</sup> A copy of that agreement can be obtained from ASX Participant Transitions. The agreement will need to be executed by both participants and ASX before the scheduled transfer of positions.
- Where the participant is also a settlement participant with sponsored holdings in ASX Settlement and it is intending to resign that participation as well, it should be able to novate its sponsorship agreements to another settlement participant via a 'participant change notice'.<sup>13</sup> Again, however, the client must be given 20 business days' notice of the intended novation and the novation will not take effect until the client has received a notice from the new controlling participant confirming that the new participant consents to acting as the client's controlling participant.<sup>14</sup> Where applicable, these notice requirements need to be factored into the participant's orderly wind-down plan. Sponsored holdings that are not able to be novated to another participant will need to be converted to issuer-sponsored holdings,<sup>15</sup> the relevant holder identification records cancelled<sup>16</sup> and the sponsorship agreements terminated by written notice to the client.<sup>17</sup>
- The participant must continue complying with all of its obligations under the ASX Clear Operating Rules<sup>18</sup> until its resignation notice has been accepted by ASX. This includes its obligation to pay relevant fees, including the annual participant fee. Any refund of all or part of that fee is at the discretion of ASX.
- ASX will not accept a resignation notice from a participant unless the participant has satisfied all its obligations to ASX.<sup>19</sup> This includes returning all ASX equipment and paying all outstanding fees and other amounts (including monetary penalties) due to ASX.
- Pending enforcement action by ASX against a participant for a breach of the ASX Clear Operating Rules may hold up its resignation, particularly if there is any likelihood of a monetary penalty being imposed by ASX in relation to the breach. Where ASX receives a notice of resignation from a participant against whom there is pending enforcement action, ASX will endeavour to finalise that action as quickly as it reasonably can, although its ability to do so will very much depend on the level of co-operation it receives from the participant. If the participant wishes its resignation to take effect prior to the conclusion of the enforcement action, ASX may be prepared to accept the provision of a bond or bank guarantee sufficient to cover any potential monetary penalty to ASX as an acceptable way forward.

<sup>10</sup> Typically, the notice from the resigning participant of the intended novation and the notice from the new clearing participant confirming that it consents to acting as the client's clearing participant would be sent in the one communication to clients.

<sup>11</sup> So that the new clearing participant can meet its obligations under ASX Clear Operating Rule 7.1.4.

<sup>12</sup> Note client collateral can be transferred as part of a transfer of client positions if the participant has the appropriate authorisation to do so under its client sponsorship agreement (see ASX Clear Operating Rules Procedure Annexure 1 clause 3.1).

<sup>13</sup> ASX Settlement Operating Rule 7.1.10. The prescribed form of participant change notice is set out in ASX Settlement Operating Rules Appendix 4.

<sup>14</sup> Again, typically, the notice from the resigning participant of the intended novation and the notice from the new controlling participant confirming that it consents to acting as the client's controlling participant would be sent in the one communication to clients.

<sup>15</sup> Pursuant to ASX Settlement Operating Rule 9.7.1.

<sup>16</sup> Pursuant to ASX Settlement Operating Rule 8.18.6.

<sup>17</sup> Pursuant to ASX Settlement Operating Rule 7.1.11(a).

<sup>18</sup> ASX Clear Operating Rule 3.13.1.

<sup>19</sup> ASX Clear Operating Rule 3.10.3(d).

### **6. Where to send a resignation notice**

A participant's resignation notice (including, where applicable, its plan for the orderly winding down of its activities as a participant) should be sent to:

The Manager, Participant Transitions  
ASX Clearing Services  
Level 5  
20 Bridge Street  
SYDNEY NSW 2000

The ASX Participant Transitions team will notify all relevant areas within ASX of the intended resignation, including Operations, Participants Compliance and Finance. It will also act as the primary point of contact and liaise with the participant in relation to whether its plan for the orderly winding down of its activities as a participant is satisfactory to ASX.

ASX Participant Transitions will co-ordinate the operational aspects of the resignation, including arranging for the cancellation of data subscriptions, return of ASX equipment and payment of outstanding ASX fees.

### **7. Continuation of certain rule obligations following resignation**

It should be noted that notwithstanding ASX's acceptance of a participant's resignation notice:

- the ASX Clear Operating Rules continue to apply and ASX continues to have jurisdiction in respect of the participant concerning any conduct or any failure to comply with the rules which occurred before the acceptance of the notice, whether that conduct or failure was by the participant or by any other person for whose conduct the participant was responsible; and
- the participant continues to be bound by any indemnity given by it under the rules.<sup>20</sup>

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<sup>20</sup> ASX Clear Operating Rule 3.13.2.