

## **SECTION 9 THIRD PARTY CLEARING AND SETTLEMENT ARRANGEMENTS**

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## **SECTION 9            THIRD PARTY CLEARING AND SETTLEMENT ARRANGEMENTS**

A General Participant must have a Clearing Agreement in place with a Market Participant before that General Participant can clear Market Transactions for that Market Participant.

In addition, before a Participant can clear Market Transactions, it must either be a Settlement Participant of an Approved Settlement Facility or have entered into a Settlement Agreement with such a Settlement Participant.

This Section sets out:

- (a) the matters that must be included in a Clearing Agreement and a Settlement Agreement;
- (b) the obligations of Participants to provide ASX Clear with a copy of each Clearing Agreement and Settlement Agreement, to notify ASX Clear of any amendments to those agreements and to notify ASX Clear if it intends to terminate the Clearing Agreement or Settlement Agreement;
- (c) the power of ASX Clear to give directions to a Participant requiring it to make or refrain from making amendments to the Clearing Agreement or the Settlement Agreement and whether or not to accept a notice of termination ; and
- (d) the nature of the Clearing Obligation assumed by a General Participant who has agreed to clear Market Transactions for a Market Participant, including where a General Participant uses a Settlement Participant, and the responsibilities of that General Participant where a Market Participant for whom the Market Transaction is cleared is suspended or the Settlement Participant is suspended or terminated.

### **9.1            CLEARING AGREEMENT**

#### **9.1.1        Clearing Agreement required**

A Participant must not clear Market Transactions for a Market Participant unless:

- (a) the Participant is admitted as a General Participant authorised to clear that category of Market Transaction;
- (b) a current Clearing Agreement is in force between the General Participant and the Market Participant which covers the category of Market Transaction which the General Participant is authorised to clear;
- (c) the Clearing Agreement contains the minimum requirements set out in Schedule 3; and

- (d) the Clearing Agreement addresses each of the following functions in compliance, where applicable, with any requirements specified by ASX Clear in the Procedures:
- (i) procedures with respect to receipt and delivery of funds;
  - (ii) risk management provisions including dealings and position limits;
  - (iii) where applicable controls and filters (including if the Market Participant is to make automated client order processing available);
  - (iv) communications and trade confirmation;
  - (v) fees, government duty and any other applicable taxes;
  - (vi) reporting between the Market Participant and the General Participant;
  - (vii) extension of credit;
  - (viii) delivery of assets for a Cash CCP Transaction;
  - (ix) where applicable, opening, approving and monitoring of Accounts for Derivatives CCP Contracts;
  - (x) where applicable, Derivatives CCP Contract exercise;
  - (xi) where applicable, payment of Initial Margin or other margins for Derivatives CCP Contracts;
  - (xii) where applicable, the terms upon which the General Participant will accept instructions from the Market Participant on behalf of a mutual client, governing the exercise of a Derivatives CCP Contract;
  - (xiii) where applicable, procedures with respect to the settlement of Cash Market Transactions in Non CS Approved Products;
  - (xiv) procedures for dealing with any Misdirected Market Transaction which is cleared by the General Participant;
  - (xv) procedures for dealing with any Market Transaction submitted by an Approved Market Operator to ASX Clear which identifies in error (or alleged error) the General Participant as a clearing counterparty to the Market Transaction, other than a Misdirected Market Transaction; and
  - (xvi) procedures with respect to the restriction, suspension and termination of clearing arrangements between the Market Participant and the General Participant.

Introduced 11/03/04 Origin OCH 6.7.1 Amended 9/12/04, 12/04/05, 04/06/10, 27/06/11

### **9.1.2 Clearing Agreement may contain other terms**

The Clearing Agreement may include other terms and conditions agreed between the parties, provided those terms are not inconsistent with the terms set out in Schedule 3. To the extent that there is any inconsistency, the terms set out in Schedule 3 prevail.

Introduced 11/03/04 Origin OCH 6.7.1

### **9.1.3 Copy of Clearing Agreement to ASX Clear**

The General Participant must give ASX Clear a copy of each Clearing Agreement (and any amendments) to which it is a party at the time specified in the Procedures.

Introduced 11/03/04 Origin OCH 6.7.1 Amended 01/08/14

### **9.1.4 General Participant bound by minimum terms**

In relation to a General Participant clearing Market Transactions for a Market Participant, the General Participant is bound by each term set out in Schedule 3, whether or not that term is actually incorporated in a Clearing Agreement with that Market Participant.

Introduced 11/03/04 Origin OCH 6.7.2 Amended 18/12/06

### **9.1.5 Obligation to notify of amendments**

Other than where set out in the Procedures, a General Participant must notify ASX Clear in writing of any amendments to a Clearing Agreement to which they are a party at the time specified in the Procedures.

Introduced 11/03/04 Origin OCH 6.7.3 Amended 18/12/06, 01/08/14

### **9.1.6 ASX Clear requirements concerning amendments**

ASX Clear may give reasonable directions to a General Participant requiring it to make (or refrain from making) amendments to the terms of any Clearing Agreement, and the General Participant must comply with those directions within the time specified by ASX Clear.

Introduced 11/03/04 Origin OCH 6.7.4

### **9.1.7 Nature of Clearing Obligations**

Where a General Participant has agreed to clear a Market Transaction for a Market Participant, the General Participant assumes the Clearing Obligations immediately the transaction is entered into by the Market Participant, so that the Clearing Obligations are owed by the General Participant (subject to any allocation of a Derivatives Market Contract which is accepted by another General Participant under these Rules):

- (a) in place of corresponding obligations owed by the Market Participant; and
- (b) as principal, regardless of whether the Market Participant entered into the Market Transaction as principal or agent (including as agent for an undisclosed principal).

For the purposes of this Rule, a General Participant which has agreed to clear a Market Transaction for a Market Participant is taken to have agreed to clear any Misdirected Market Transaction and assumes the Clearing Obligations immediately the Misdirected Market Transaction is entered into by the Market Participant.

Introduced 11/03/04 Origin OCH 6.7.5 SCH 7.7 Amended 9/12/04

#### **9.1.8 Same General Participant on both sides of Market Transaction**

Where Rule 9.1.7 would cause the Clearing Obligations on each side of a single Market Transaction to be cleared by a single General Participant because either:

- (a) the General Participant is the General Participant of two Market Participants involved; or
- (b) the Market Participant and its General Participant entered into a Derivatives Market Contract,

no form of merger or extinguishment will occur and the respective Clearing Obligations will continue to subsist in such a way as to be regarded for the purposes of the Rules as separately existing Clearing Obligations of the General Participant.

Introduced 11/03/04 Origin OCH 6.7.6

#### **9.1.9 Suspension of Market Participant**

If a Market Participant is suspended under the operating Rules of an Approved Market Operator, the General Participant continues to have the Clearing Obligations for all Market Transactions entered into by the Market Participant prior to its suspension.

Introduced 11/03/04 Origin OCH 6.7.7

#### **9.1.10 Termination of Clearing Agreement by General Participant**

If a General Participant intends to terminate its Clearing Agreement with a Market Participant, the General Participant must notify ASX Clear and each relevant Approved Market Operator in writing of the time and date when this will occur.

Introduced 11/03/04 Origin OCH 6.7.8 Amended 27/06/11

#### **9.1.11 Effect of notice of termination**

The termination of a Clearing Agreement is not effective until ASX Clear accepts the termination in writing. In deciding whether to accept a termination, ASX Clear may have regard to whether:

- (a) the Market Participant is suspended by each relevant Approved Market Operator and all orders of the Market Participant are removed from the trading facility operated by the Approved Market Operator;
- (b) the Market Participant has become a Participant authorised to clear those categories of Market Transaction;
- (c) the Market Participant has entered into a Clearing Agreement with another General Participant; and

- (d) appropriate arrangements have been made for the settlement, close out or transfer of any Cash CCP Transactions or Derivatives CCP Contracts registered to the General Participant.

Introduced 11/03/04 Origin OCH 6.7.9 Amended 27/06/11

#### **9.1.12 General Participant to continue to have Clearing Obligations**

Unless alternative arrangements have been made for the settlement, close out or transfer of any Cash CCP Transactions or Derivatives CCP Contracts registered to the General Participant in relation to the Market Participant, the General Participant continues to have the Clearing Obligations for Market Transactions entered into by the Market Participant prior to the termination of the Clearing Agreement.

Introduced 11/03/04 Origin OCH 6.7.10

#### **9.1.13 Non performance by participant Client**

A General Participant must inform ASX Clear immediately if a Market Participant with whom the General Participant has a Clearing Agreement defaults on a financial or delivery obligation in respect of a Cash CCP Transaction or Derivatives CCP Contract.

Introduced 11/03/04 Origin OCH 6.7.12

#### **9.1.14 Direct Participants who clear for Wholly-Owned Group Entities**

In this Rule 9.1 a reference to a General Participant includes a Direct Participant when the Direct Participant clears for a Market Participant that is a Wholly-Owned Group Entity and its clients.

Introduced 02/08/13

### **9.2 THIRD PARTY SETTLEMENT ARRANGEMENTS**

#### **9.2.1 Settlement Agreement required**

If a Participant is not a Settlement Participant of an Approved Settlement Facility for a category of Cash Market Transactions, the Participant must not clear transactions of that category unless:

- (a) a Settlement Agreement is in force between the Participant and a Settlement Participant of an Approved Settlement Facility under which the Participant appoints the Settlement Participant as its agent for the purpose of settling the category of Cash Market Transactions through the Approved Settlement Facility; and
- (b) the Settlement Agreement contains the minimum requirements set out in Schedule 4; and
- (c) the Settlement Agreement addresses each of the following functions:
  - (i) procedures with respect to receipt and delivery of funds;
  - (ii) fees, government duty and any other applicable taxes;

- (iii) reporting between the Participant and the Settlement Participant; and
- (iv) delivery of assets for settlement.

If a Participant changes Settlement Participants they must inform ASX Clear. ASX Clear may request a copy of the new Settlement Agreement.

Introduced 11/03/04

#### **9.2.2 Settlement Agreement may contain other terms**

The Settlement Agreement may include other terms and conditions agreed between the parties, provided those terms are not inconsistent with the terms set out in Schedule 4. To the extent that there is any inconsistency, the terms set out in Schedule 4 prevail.

Introduced 11/03/04

#### **9.2.3 Copy of Settlement Agreement to ASX Clear**

The Participant must if requested to do so by ASX Clear, give ASX Clear within 2 Business Days a copy of the Settlement Agreement (and any amendments) to which it is a party.

Introduced 11/03/04

#### **9.2.4 Non-compliance with minimum terms**

In relation to each Cash Market Transaction settled in accordance with a Settlement Agreement, the Participant must comply with each term in Schedule 4, whether or not that term is actually incorporated in the Settlement Agreement.

Introduced 11/03/04

#### **9.2.5 Obligation to notify of amendments**

Other than where set out in the Procedures, a Participant must notify ASX Clear in writing of any amendments to their Settlement Agreement at least 10 Business Days before the amendment becomes effective.

Introduced 11/03/04 Amended 18/12/06

#### **9.2.6 ASX Clear requirements concerning amendments**

ASX Clear may give reasonable directions to a Participant requiring it to make (or refrain from making) amendments to the terms of any Settlement Agreement, and the Participant must comply with those directions within the time specified by ASX Clear.

Introduced 11/03/04

#### **9.2.7 Nature of Clearing Obligations**

The Participant remains at all times responsible to ASX Clear to discharge its Clearing Obligations whether or not the Participant uses another Settlement Participant as its agent to do so. This applies even when:

- (a) the Participant is suspended or terminated as a Settlement Participant; or

- (b) the Participant uses a Settlement Participant and that Settlement Participant is suspended or terminated.

Introduced 11/03/04

#### **9.2.8 Termination of Settlement Agreement**

If a Participant intends to terminate its Settlement Agreement with a Settlement Participant, the Participant must notify ASX Clear in writing of the time and date when this will occur.

Introduced 11/03/04

#### **9.2.9 Effect of notice of termination**

The termination of a Settlement Agreement is not effective until ASX Clear accepts the termination in writing. In deciding whether to accept a termination, ASX Clear may have regard to whether:

- (a) the Participant has become a Settlement Participant in the Approved Settlement Facility authorised to settle the category of Cash Market Transactions for which the Participant has Clearing Obligations;
- (b) the Participant has entered into a Settlement Agreement with another Settlement Participant; and
- (c) appropriate arrangements have been made for the settlement or transfer of any Cash CCP Transactions registered to the Participant.

Introduced 11/03/04

#### **9.2.10 Participant to continue to have Clearing Obligations**

The Participant remains responsible for discharging its Clearing Obligations notwithstanding the termination of its Settlement Agreement.

Introduced 11/03/04

#### **9.2.11 Non performance by Settlement Participant**

A Participant must inform ASX Clear immediately that it becomes aware that it may not be able to discharge its Clearing Obligations for any reason related to the non performance of a settlement requirement under the operating rules of an Approved Settlement Facility by the Participant or the Settlement Participant acting on behalf of the Participant.

Introduced 11/03/04

### **9.3 THIRD PARTY EXERCISE OF DERIVATIVES CCP CONTRACTS**

#### **9.3.1 Participant may use another Participant to clear Exercise or Expiry**

If an Options CCP Contract gives rise upon exercise or expiry to a Cash Market Transaction and the Participant clearing the contract (the "Derivatives Participant") is not authorised to clear that Cash Market Transaction, the Derivatives Participant must



nominate another General Participant (the “Cash Participant”) to do so provided that a current Clearing Agreement is in force between them and the Cash Participant is authorised to clear that category of Market Transaction.

Introduced 11/03/04

### **9.3.2 Application of Rule 9.3.1 to clearing arrangements for Cash Market Transaction**

If a nomination referred to in Rule 9.3.1 is made, then Rule 9.1 applies to the Clearing Agreement and the relationship between the parties as if:

- (a) references in Rule 9.1 to the Market Participant were references to the Derivatives Participant;
- (b) references in Rule 9.1 to the Participant or General Participant were references to the Cash Participant; and
- (c) references in Rule 9.1 to the transaction being entered into were references to the exercise or expiry of the Options CCP Contract.

Introduced 11/03/04

### **9.3.3 Suspension of General Participant**

If the second Participant is suspended from access to the Clearing System or participation under these Rules, ASX Clear may then suspend the first Participant, take other action ASX Clear considers appropriate or both until:

- (a) the suspension is removed; or
- (b) the first Participant has in the reasonable opinion of ASX Clear made appropriate alternative arrangements.

Introduced 11/03/04 Origin OCH S2A.3.1 Amended 12/04/05

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