

## SUSPENSION AND TERMINATION OF PARTICIPANTS

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| <p><b>The purpose of this Guidance Note</b></p> | <ul style="list-style-type: none"> <li>To provide guidance to participants on how ASX approaches the suspension or termination of a participant's admission to the ASX market</li> </ul>  |
| <p><b>The main points it covers</b></p>         | <ul style="list-style-type: none"> <li>The circumstances which may lead to a suspension or termination</li> <li>The obligation of a participant to notify ASX of those circumstances</li> <li>The action ASX may take on becoming aware of those circumstances</li> <li>Notification of ASX's decision to impose a suspension or termination</li> <li>The effect of a suspension or termination</li> <li>Appealing a suspension or termination</li> </ul> |
| <p><b>Related materials you should read</b></p> | <ul style="list-style-type: none"> <li>ASX Operating Rules Guidance Note 2 <i>Resigning a Participation</i></li> </ul>  |

**History:** Guidance Note 5 amended 31/03/17. Previous versions of this Guidance Note were issued in 03/14 and 06/15.

**Important notice:** ASX has published this Guidance Note to assist participants to understand and comply with their obligations under the ASX Operating Rules. It sets out ASX's interpretation of the ASX 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 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 provide guidance to participants on how ASX Limited (ASX) approaches the suspension or termination of a participant's admission to the ASX market.

## 2. The circumstances which may lead to a suspension or termination

ASX may suspend or terminate the admission of a participant if ASX considers that the participant has committed an "event of default".<sup>1</sup> These events include:

- if the participant is not a clearing participant, the participant failing to comply with its obligation to have in place and maintain adequate arrangements for clearing its market transactions;<sup>2</sup>
- if the participant is a clearing participant, the participant ceasing to be, or being suspended from being, a clearing participant, or being suspended from clearing certain categories of market transaction, under the ASX Clearing Operating Rules and not putting in place alternative adequate arrangements for clearing its market transactions;<sup>3</sup>
- the participant failing to pay any amount due and payable to, or to perform any of its obligations to, or to comply with any reasonable direction, decision or requirement of, ASX or an approved clearing facility;
- the participant indicating that it will or may suspend payment to ASX, an approved clearing facility or to creditors;
- the participant being or stating that it is insolvent under administration, or ceasing or indicating that it will or may cease to carry on business;
- the participant becoming, or the participant or any other person taking any step which might result in the participant becoming, an externally-administered body corporate or an insolvent under administration;
- any distress, execution or other process being levied or enforced or served upon or against any property of the participant;
- an investigator, inspector or other officer being appointed, or an investigation being directed or commenced under the Corporations Act or other legislation to investigate all or part of the affairs of the participant or a related entity, in circumstances which are, in the opinion of ASX, material to the capacity of the participant to meet its obligations to other participants, ASX or an approved clearing facility;

<sup>1</sup> ASX Operating Rules 5160(b) and (c).

<sup>2</sup> As required by Rule 1003 and Schedule 1 of the ASX Operating Rules.

<sup>3</sup> See note 2 above.

- the participant no longer satisfying the criteria for admission as a participant or failing to comply with any condition of admission as a participant;<sup>4</sup>
- the participant making a wilful omission or misstatement in respect of a material matter prior to, or in connection with, its application for admission as a participant;
- the participant failing to comply with any of rules 5010 to 5013 (provision of information to ASX) or 5020 to 5026 (provision of independent expert report or certification to ASX);
- the participant failing to comply with any determination resulting from enforcement action taken by ASX against the participant;<sup>5</sup>
- the participant being suspended, expelled or terminated as a member or participant of any Australian or overseas derivatives, securities, commodity or stock exchange or market or any clearing house or clearing and/or settlement facility or being subjected to sanctions imposed by an Australian or overseas regulatory authority;<sup>6</sup> and
- if the participant is an individual, the participant dying.<sup>7</sup>

ASX may also suspend or terminate the admission of a participant if an event or series of events (whether related or not) occurs in relation to the participant or a related entity, which is not an event of default but which ASX considers has or may have a material adverse effect on:

- the capacity of the participant to meet all its obligations to ASX or a related entity, an approved clearing facility or other participants;
- the financial position of ASX, an approved clearing facility or the participant; or
- the ASX market or an underlying market.<sup>8</sup>

Such events include (without limitation):

- the participant failing to comply, or indicating that it will or may fail to comply, with any of the ASX Operating Rules or Procedures or the terms of any agreement with ASX;
- the participant failing to comply, or indicating that it will or may fail to comply, with any of the rules of, or the terms of any agreement with, an approved clearing facility;
- ASX being informed by another derivatives, securities, commodity or stock exchange or market or any clearing house or clearing and/or settlement facility that the participant or a related body corporate is not complying with its obligations to that exchange, market, clearing house or clearing and/or settlement facility;
- the participant breaching Chapter 7 of the Corporations Act or any regulations made under that Chapter;<sup>9</sup> and

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<sup>4</sup> This could arise, for example, where a participant has outsourced any of its activities as a participant to another participant and that other participant's participation in the ASX market has been suspended or terminated, resulting in the first-mentioned participant no longer being able to comply with its obligations under the ASX Operating Rules.

<sup>5</sup> This includes enforcement action under ASX Operating Rule 5100 and the ASX Enforcement and Appeals Rulebook or under the Old Australian Securities Exchange Enforcement and Appeals Rulebook (as defined in ASX Operating Rule 8000).

<sup>6</sup> Conversely, a participant's suspension or termination of admission from the ASX market may result in its suspension or termination as a participant in other markets and clearing and settlement facilities.

<sup>7</sup> ASX Operating Rule 5161.

<sup>8</sup> ASX Operating Rule 5162.

<sup>9</sup> As referred to in Corporations Regulation 7.2.07(b)(v).

- the participant breaching a condition on its Australian financial services licence.<sup>10</sup>

If ASX considers that an event of default or other event entitling it to suspend or terminate the admission of a participant has occurred, ASX may impose restrictions on the participant's rights or privileges as a participant.<sup>11</sup> These restrictions may be instead of, or in addition to, a suspension.

ASX may also take any other action, or direct the participant to take any action or no action, in order to eliminate or minimise the risk with respect to market transactions entered into by the participant or which ASX considers appropriate for the protection of ASX, an approved clearing facility, the ASX market or other participants.<sup>12</sup> Again, these actions or directions may be instead of, or in addition to, a suspension.

### 3. The obligation of a participant to notify ASX of those circumstances

A participant must immediately notify ASX of certain matters that could give rise to a suspension or termination of its admission. These include:

- it becoming aware of having committed a significant breach of the ASX Operating Rules or Procedures;<sup>13</sup> or
- it becoming aware or having reasonable grounds for suspecting the existence of any other event or circumstance which adversely affects, or may adversely affect, its financial position or solvency or its ability to comply with the ASX Operating Rules or Procedures.<sup>14</sup>

In addition, a participant that is also a clearing participant must immediately notify ASX of any circumstances which constitute an event of default under the operating rules of an approved clearing facility.<sup>15</sup>

### 4. The action ASX may take on becoming aware of those circumstances

Where ASX becomes aware of circumstances which may entitle it to suspend or terminate the admission of a participant, it will liaise closely with the participant to understand the circumstances and the potential ramifications for the participant, ASX and the market more generally.<sup>16</sup>

ASX expects to have open, frank and frequent communications with the senior management of the participant and, if an external administrator (such as a receiver, administrator or liquidator) has been appointed, with the external administrator, while those circumstances continue. This includes ASX being kept apprised of material developments as they arise.

If it considers it appropriate, ASX will schedule meetings or conference calls with the participant before the open of trading and after the close of trading on each trading day so that it can be apprised of, and take appropriate action in response to, events overnight or during that day. It may also require the participant to provide regular reports to ASX.

Depending on the circumstances ASX may establish a Participant Incident Response Committee with personnel from its risk, compliance and operations teams and other relevant areas to co-ordinate ASX's response and to provide input into any decision on whether to suspend or terminate the admission of, or take other action in relation to, the participant.

<sup>10</sup> As referred to in Corporations Regulation 7.2.07(b)(vi).

<sup>11</sup> ASX Operating Rule 5160(d).

<sup>12</sup> ASX Operating Rule 5160(e).

<sup>13</sup> ASX Operating Rules Procedure 5000(a).

<sup>14</sup> ASX Operating Rules Procedure 5000(e).

<sup>15</sup> ASX Operating Rules Procedure 5000(b).

<sup>16</sup> This applies whether the participant notified ASX of those circumstances or ASX became aware of those circumstances from another source.

Where an event of default or other event referred to above has occurred, ASX has the power to take a variety of steps including, but not limited to:

- imposing restrictions or conditions<sup>17</sup> on the participant's rights or privileges as a participant;<sup>18</sup>
- giving a direction to the participant to take any action or not to take action on certain matters;<sup>19</sup>
- suspending the participant's admission as a participant for a period of time;<sup>20</sup> and
- terminating the participant's admission as a participant.<sup>21</sup>

Some of the more common restrictions or conditions applied by ASX include:

- that the participant not provide, or enter into any agreement to provide, execution services to a new client;
- that the participant not enter into any new market transactions on house account or for any or certain specified clients;
- that the participant not enter into particular types of market transactions on house account or for any or certain specified clients;
- that the participant only enters into new market transactions on house account or for any or certain specified clients as necessary to close out existing positions;
- that the participant only enters into particular types of market transactions on house account or for any or certain specified clients as necessary to close out existing positions;
- that the participant restricts its business activities (including its non-ASX activities) in some other specified manner;
- that the participant provide to ASX information or reports on specified matters and at specified times; and
- that the participant provide a solvency certificate on a specified basis to ASX signed by all or a given number of its directors.

## 5. Notification of ASX's decision to impose a suspension or termination

If ASX decides that the admission of a participant should be suspended or terminated, it will notify the participant in writing of that decision.<sup>22</sup> It will also usually publish a market notice naming the participant and detailing the action it has taken.<sup>23</sup>

Depending on circumstances, ASX may also notify ASIC, the Reserve Bank of Australia and alternative market operators of the suspension or termination.<sup>24</sup>

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<sup>17</sup> Under ASX Operating Rule 1210.

<sup>18</sup> See note 11 above and the accompanying text.

<sup>19</sup> See note 12 above and the accompanying text.

<sup>20</sup> ASX Operating Rule 5160(b).

<sup>21</sup> ASX Operating Rule 5160(c).

<sup>22</sup> ASX Operating Rule 5164(a). Initial communication of ASX's decision will frequently be made by telephone and then followed up with a formal written notice.

<sup>23</sup> ASX Operating Rule 5164(c).

<sup>24</sup> ASX Operating Rules 6720 and 6723.

### 6. The effect of a suspension

A suspension will operate for such period as ASX considers necessary or desirable.<sup>25</sup> During the period of suspension, the participant cannot undertake any transactions on ASX and must not hold itself out as an ASX participant.<sup>26</sup>

ASX may extend the period of a suspension, if it considers an extension is necessary or desirable.<sup>27</sup> It may also terminate the admission of a suspended participant at any time during its suspension.<sup>28</sup>

ASX will typically liaise with the participant about the requirements that must be satisfied for its suspension to be lifted. ASX may require proof that those requirements have been satisfied before it will lift the suspension and will require the participant and any external administrator of the participant to keep ASX apprised of material developments affecting the participant or its ability to resume its market activities, as they arise.

### 7. The effect of a termination

The termination of a participant's admission does not affect any accrued rights which ASX, its related bodies corporate or other participants have against the participant or any accrued obligations which the participant has to ASX, its related bodies corporate or other participants.<sup>29</sup>

Notwithstanding the termination:

- the ASX 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 its resignation, 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>30</sup>

### 8. Appealing a suspension or termination

A participant who is dissatisfied with a decision by ASX to suspend or terminate its admission is entitled to appeal that decision.<sup>31</sup>

The participant must pay an appeal fee of \$5,000 (exclusive of GST) to, and lodge written notice of the appeal with, the ASX Appeals Tribunal within 10 business days after written reasons for the decision are sent to the participant.<sup>32</sup>

Further information about the appeal process can be found in Guidance Note 1 to the ASX Enforcement and Appeals Rulebook.

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<sup>25</sup> ASX Operating Rule 5163(a).

<sup>26</sup> ASX Operating Rule 5163(b).

<sup>27</sup> ASX Operating Rule 5163(a).

<sup>28</sup> ASX Operating Rule 5163(c).

<sup>29</sup> ASX Operating Rule 5500.

<sup>30</sup> ASX Operating Rule 5501.

<sup>31</sup> ASX Operating Rules 5200(b) and (c).

<sup>32</sup> Rule 3.1.1(b) of the ASX Enforcement and Appeals Rulebook and the accompanying Procedure.