

SUSPENSION AND TERMINATION OF PARTICIPANTS

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

History: Guidance Note 5 introduced 31/03/17.

Important notice: ASX has published this Guidance Note to assist participants to understand and comply with their obligations under the Austraclear Regulations. It sets out ASX's interpretation of the Austraclear Regulations and how ASX is likely to enforce those regulations. Nothing in this Guidance Note necessarily binds ASX in the application of the Austraclear Regulations 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 Austraclear Limited (Austraclear) approaches the suspension or termination of a participant's admission to the Austraclear clearing and settlement facility.

This Guidance Note does not address the powers of Austraclear to suspend or terminate a payment provider in the electronic conveyancing settlement facility¹ or to suspend or terminate the approval of an entity as a foreign currency settlement bank.²

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

Austraclear may suspend or terminate the participant status³ of a participant⁴ where:

- Austraclear receives a notice or otherwise becomes aware that:
 - the participant has become, or there is a reasonable suspicion that it will become, subject to an event of insolvency;⁵ or
 - the participant has become subject to a change in control;⁶
- Austraclear determines that the participant has failed to meet an obligation under the Austraclear Regulations;⁷
- Austraclear determines that the participant no longer satisfies the eligibility requirements or the requirements for admission to participant status;⁸

¹ See Austraclear Regulation 27.10.

² See Austraclear Regulation 29.5.

³ Defined in Austraclear Regulation 1.1 to mean the state of being a participant.

⁴ A "participant" is any entity which has been accepted under the Austraclear Regulations as a participant in the Austraclear system and which is at that time still a participant (Austraclear Regulation 1.1).

⁵ Austraclear Regulation 3.10(a)(i). "Insolvency event" is defined in Austraclear Regulation 1.1 to mean: (a) if the person is a body corporate, the person becoming an externally-administered body corporate within the meaning of the Corporations Act 2001 (Cth); (b) if the person is an individual, the person becoming an insolvent under administration within the meaning of that Act; or (c) someone taking control of the person's property for the benefit of the person's creditors because the person is, or is likely to become, insolvent.

⁶ Austraclear Regulation 3.10(c). "Change of control" means any alteration to any material extent from the position subsisting at the date of the participant's application for participant status in any of the following respects: (a) control of the composition of its board of directors or other governing body; (b) control of more than half the voting rights attaching to shares in it; or (c) control of more than half of its issued share capital (excluding any part of it which carries no right to participate beyond a specified amount in the distribution of either profit or capital). It includes, in each case, the acquisition by any means by a person of a relevant interest sufficient to allow the person either alone or jointly to exercise the control referred to above (Austraclear Regulation 3.9(d)).

⁷ Austraclear Regulation 3.10(a)(ii).

⁸ Austraclear Regulation 3.10(a)(ii). The eligibility requirements and requirements for admission to participant status are set out in Austraclear Regulation 2.4. This could arise, for example, where a participant has appointed another participant as its "participant proxy" under Austraclear Regulation 17.6 or otherwise outsourced any of its activities as a participant to another participant and that other

- Austraclear is no longer satisfied⁹ that the participant should be admitted to participant status;¹⁰
- the participant fails to comply with an enforcement determination;¹¹ or
- the participating bank¹² with whom the participant maintains its nominated account has its participant status suspended or terminated.¹³

Where Austraclear suspends a participant's participant status:

- no transaction to which that participant is a party may be settled until the suspension is lifted;
- Austraclear must, as soon as practicable after the suspension, review the participant's participant status to determine whether the participant will comply with the conditions for participant status for the relevant class of participant;
- the participant must give Austraclear any information requested by Austraclear to enable it to review the participant's participant status; and
- Austraclear, after its review, may:
 - continue the suspension (in which case it must be periodically reviewed);
 - terminate the participant's participant status; or
 - lift the suspension.¹⁴

participant's participant status in the Austraclear facility has been suspended or terminated, resulting in the first-mentioned participant no longer satisfying the eligibility requirements or the requirements for admission to participant status.

⁹ Having regard to the relevant considerations set out in Austraclear Regulation 2.4.

¹⁰ Austraclear Regulation 3.10(a)(ii). As an example, a participant who has appointed a participant proxy (as defined in Austraclear Regulation 1.1) to access and operate in the Austraclear system on behalf of the participant under Austraclear Regulation 17.6 may have its participation suspended or terminated on this ground if the participant status of the participant proxy is suspended or terminated and the participant has no other means of accessing and operating in the Austraclear system.

¹¹ Austraclear Regulations 3.10(a)(iii) and (iv). The reference to an "enforcement determination" means a determination made by an old tribunal pursuant to the Old Australian Securities Exchange Disciplinary Processes and Appeals Rulebook (as defined in Austraclear Regulation 3.14B) or action taken by Austraclear in accordance with Austraclear Regulation 3.11 or the provisions of the ASX Enforcement and Appeals Rulebook.

¹² A "participating bank" is any bank or any other entity which has been and remains accepted by the Reserve Bank as a participant of RITS with an exchange settlement account and which has agreed in writing to participate in the Austraclear system as a participating bank and to be bound by the Austraclear Regulations (Austraclear Regulation 1.1). A participant that is not a participating bank is required to maintain one or more accounts with a participating bank which are available for use by the participant in relation to the Austraclear system (Austraclear Regulation 13.2).

¹³ Austraclear Regulation 3.10(b). Note that the suspension or termination of a participating bank may have implications for participants in other ASX clearing and settlement facilities. This could occur in respect of:

- the ASX Settlement facility, if the participating bank is a participant's payment provider under the ASX Settlement Operating Rules and there are reasonable grounds for suspecting the payment provider will or may not authorise a net payment obligation under section 10 of the ASX Settlement Operating Rules (see ASX Settlement Operating Rules 12.18.1(g) and (h) and 12.19.1(c));
- the ASX Clear facility, if as a result of the suspension or termination of the participating bank a clearing participant fails to pay any amount due and payable to ASX or the clearing participant indicates it will or may suspend payment to ASX Clear or to creditors (ASX Clear Operating Rule 15.1.1(b) and (f)); and
- the ASX Clear (Futures) facility, if the clearing participant fails to pay initial margins, variation margins, daily settlement amounts, intra-day margins or extra margins within the period provided by the ASX Clear (Futures) Operating Rules, or any other amount or amounts in total exceeding A\$1,000 which are due and payable to ASX Clear (Futures), or the clearing participant stops or suspends or threatens to stop or suspend payment of all or a class of its debts (ASX Clear (Futures) Operating Rule 71.3(c), (d) and (f)(iii)).

Refer to Guidance Note 5 *Suspension and Termination of Participants* under the relevant rulebook.

¹⁴ Austraclear Regulation 3.12. Austraclear will only lift a suspension if it forms the view that the continuing use of the system by the participant will not be contrary to the interests of the participants of the system. Austraclear may impose conditions before agreeing to lift a suspension.

3. The obligation of a participant to notify Austraclear of those circumstances

A participant must notify Austraclear as soon as practicable if:

- it becomes subject to an insolvency event, or if there is a reasonable suspicion that it may become subject to an insolvency event;¹⁵ or
- it becomes subject to a change in control.¹⁶

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

Where Austraclear becomes aware of circumstances which may entitle it to suspend or terminate the participant status of a participant, it will liaise closely with the participant to understand the circumstances and the potential ramifications for the participant, Austraclear and the clearing and settlement system more generally.¹⁷

Austraclear 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 Austraclear being kept apprised of material developments as they arise.

If it considers it appropriate, Austraclear will schedule meetings or conference calls with the participant 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 Austraclear.

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

Austraclear may at any time impose conditions on a participant's participant status that Austraclear considers appropriate.¹⁸

Conditions that could be applied by Austraclear in these circumstances include:

- that the participant restricts its business activities (including its non-Austraclear activities) in some specified manner;
- that the participant provide to Austraclear information or reports on specified matters and at specified times; and
- that the participant provide a solvency certificate on a specified basis to Austraclear signed by all or a given number of its directors.

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

If Austraclear decides that a participant's participant status should be suspended or terminated, it will notify the participant in writing of that decision.¹⁹ It will also usually publish a market notice naming the participant and detailing the action it has been taken.

¹⁵ Austraclear Regulation 3.9(a). If the participant is not a participating bank, it must also notify its participating bank. The participant must specify the relevant insolvency event in the notification to Austraclear and its participating bank. See note 5 above for the definition of "insolvency event".

¹⁶ Austraclear Regulation 3.9(d). See note 6 above for the definition of "change in control".

¹⁷ This applies whether the participant notified Austraclear of those circumstances or Austraclear became aware of those circumstances from another source.

¹⁸ Austraclear Regulation 2.7(c).

¹⁹ Initial communication of Austraclear's decision will frequently be made by telephone and then followed up with a formal written notice.

Depending on circumstances, Austraclear may also notify ASIC and the Reserve Bank of Australia of the suspension or termination.

6. The effect of a suspension or termination

Where a participant's participant status is suspended or terminated, that event does not in any way prejudice, lessen or affect the rights and obligations of the participant which:

- have accrued at the time of suspension or termination; or
- may arise, accrue or crystallise after that time out of, or by reason of, facts or circumstances occurring or in existence at or before that time.²⁰

7. Appealing a suspension or termination

A participant who is dissatisfied with a decision by Austraclear under Austraclear Regulation 3.12 to continue an existing suspension of its participant status²¹ or to terminate its participant status is entitled to appeal that decision.²²

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 receipt of notification of ASX's decision are sent to the participant.²³

Pending a decision of the ASX Appeals Tribunal, unless the Appeals Tribunal determines otherwise, any suspension will remain in force and any termination of the participant's participant status will be treated as a suspension.²⁴

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

²⁰ Austraclear Regulation 3.14(a) and (b). The participant must immediately withdraw all deposited securities of which it is the owner in the prescribed manner (Austraclear Regulation 3.14(c)) and has no right to any refund of, or credit in respect of, any fees paid or then payable by the participant (Austraclear Regulation 3.14(d)).

²¹ A participant cannot appeal the initial decision of Austraclear to suspend its participant status under Austraclear Regulation 3.10 (Austraclear Regulation 3.13(b)). It can only appeal an extension of the suspension under Austraclear Regulation 3.12 where the extension takes the total period of the suspension to more than 10 business days (Austraclear Regulation 3.13(a)).

²² Austraclear Regulation 3.13(a).

²³ Rule 3.1.7(c) of the ASX Enforcement and Appeals Rulebook and the accompanying Procedure.

²⁴ Austraclear Regulation 2.10(b) and (c).