

SECTION 23 TRANSITIONAL ARRANGEMENTS FOR EXISTING ASX PARTICIPATING ORGANISATIONS (DERIVATIVES)

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SECTION 23 TRANSITIONAL ARRANGEMENTS FOR EXISTING ASX PARTICIPATING ORGANISATIONS (DERIVATIVES)

Section 23 only applies to Derivatives CCP Contracts and continues to govern OCH Clearing Participants which transitioned from being ASX Derivatives Clearing Participants in December 2002 as well as now dealing with:

- (a) transitioning Clearing Participants under the OCH Rules as Participants under these Rules;
- (b) transitioning novated open contracts under the OCH Rules as Derivative CCP Contracts under these Rules;
- (c) transitioning all cover under the OCH Rules as cover under these Rules;
- (d) transitioning the rights and obligations arising under existing terminology under the OCH Rules to new terminology and requirements under these Rules including Schedule 5 Client Agreement minimum terms;
- (e) transitioning the Clearing Agreement between ASX and ASXF Trading Participants and the OCH Clearing Participant to a Clearing Agreement between the same parties as that Approved Market Operator's Market Participant and that Participant under these Rules including Schedule 4;
- (f) abolishing approval of partnership structures on the first anniversary after Implementation Date (ie the date the ACH Rules come into effect).

23.1 INTERPRETATION AND APPLICATION OF THIS RULE

23.1.1 Interpretation

In this Rule 23:

"**Affiliate**" means an Existing Affiliate or a New Affiliate;

"**Affiliate Based CP**" means an Existing Clearing Participant to which ASX granted recognition as a Participating Organisation under the Old Recognition Rules on the basis that one or more directors of an Existing Clearing Participant were recognised as Affiliates;

"**Approved Representative**" means an Existing Approved Representative or a New Approved Representative;

"**Effective Time**" means 2 December 2002 being the time which OCH notified Participants as being the time at which OCH Rule 1A became effective;

"**Exchange Participant**" has the meaning given to it under the OCH Rules;

"**Existing Affiliate**" means a person who was recognised by OCH as an "Affiliate" under the OCH Rules;

"**Existing Approved Representative**" means a person who was an "Approved Representative" under the OCH Rules;

"**Existing Clearing Participant**" means a person which, immediately before the Implementation Date was recognised by OCH as a Clearing Participant under the OCH Rules;

"**Implementation Date**" means the time which ASX Clear notifies Participants as being the time at which these Rules become effective.

"**New Affiliate**" means a person who becomes an Affiliate during the Recognition Transitional Period under Rule 23.4.1(e);

"**New Approved Representative**" means a person who becomes an Approved Representative during the Recognition Transitional Period under Rule 23.4.1(e);

"**OCH Rules**" means the operating rules of OCH immediately prior to the Implementation Date.

"**Old Recognition Rules**" means the business rules of ASX governing the recognition of Participating Organisations of ASX and the role and conduct of Affiliates and Approved Representatives in force immediately prior to 16 July 2002 (being the date on which rule 5 of the business rules of ASX was amended);

"**Old ASX Business Rules**" means the business rules of ASX in force immediately before the Effective Time relating to the clearing and settlement by ASX Clear and Existing Clearing Participants of exchange traded option contracts (including without limitation, low exercise price options (LEPOs)) entered into on markets operated by ASX;

"**Recognition End Date**" means the earlier of:

- (a) the date on which the Recognition Transitional Period ends; or
- (b) in the case of an Affiliate or an Approved Representative involved in the business of a particular Participant, the date on which the Participant makes an election under Rule 23.4.2; and

"**Recognition Transitional Period**" means the period from the Effective Time up to and including 15 July 2004, unless extended under Rule 23.4.4.

Introduced 11/03/04 Origin OCH 1A.1.1

23.1.2 Application

This Rule 23 applies to:

- (a) Existing Clearing Participants;
- (b) Existing Affiliates engaged in the business of an Existing Clearing Participant; and

- (c) Existing Approved Representatives engaged in the business of an Existing Clearing Participant,

in respect of recognition under the OCH Rules, Open Contracts under the OCH Rules and Derivatives CCP Contracts under these Rules.

Introduced 11/03/04 Origin OCH 1A.1.2

23.2 TRANSITION OF RECOGNITION AND RELATED MATTERS

23.2.1 Transition

From the Implementation Date:

- (a) each Existing Clearing Participant is taken to be admitted as a:
 - (i) Direct Participant under these Rules; or
 - (ii) General Participant under these Rules where the Existing Clearing Participant has entered into a Clearing Agreement under OCH Rule 6.7.1;
- (b) each contract registered at that time with OCH as an "Open Contract" (within the meaning of the OCH Rules) at that time is taken to be a Derivatives CCP Contract within the meaning of these Rules and the "Buyer" and "Seller" respectively of the Open Contract under the OCH Rules are taken to be the "Buyer" and the "Seller" respectively of the Derivatives CCP Contract under these Rules;
- (c) all "Cover" (within the meaning of the OCH Rules) held by OCH at that time is taken to be Cover within the meaning of these Rules;
- (d) each Existing Affiliate and each Existing Approved Representative engaged in the business of an Existing Clearing Participant at the Effective Time is taken to be recognised as an Affiliate or Approved Representative (as applicable) under these Rules;
- (e) each person recognised as a "Responsible Executive" under the OCH Rules is taken to be recognised as a Responsible Executive under these Rules;
- (f) any circulars, notices, bulletins, explanatory memoranda or other communications issued or made by OCH under the OCH Rules are taken to be issued or made by ASX Clear under these Rules with such modifications to rule references and terminology as are necessary to give effect to the circular, notice, bulleting explanatory memorandum or communication;
- (g) any notices, acknowledgments or forms, including Collateral forms, provided by an Existing Clearing Participant to OCH under the OCH Rules are taken to be provided by the Existing Clearing Participant under these Rules;
- (h) subject to Rule 23.2.2, the OCH Rules cease to apply to the Existing Clearing Participants, the Open Contracts, the Cover, the Existing Affiliates and the Existing Approved Representatives referred to in paragraphs (a), (b), (c), (d) and (e);

- (i) to the extent of any inconsistency between the terms of an agreement between an Existing Clearing Participant and a Client under the OCH Rules and the terms set out in Schedule 5, the terms set out in Schedule 5 prevail;
- (j) each Existing Participant is taken to be authorised to clear the categories of transaction that it was recognised as being able to clear under the Old Rules;
- (k) where an Existing Clearing Participant and an Exchange Participant are party to a Clearing Agreement which was entered under OCH Rule 6.7.1, before the Implementation Date, the terms of that agreement are replaced by the terms set out in Rule 8.1.1 and Schedule 4;
- (l) where a Participant has previously notified ASX, or since the Effective Time has notified OCH, of the details of an Affiliate or Approved Representative, that Affiliate or Approved Representative is a suitability qualified affiliate, for the purpose of Section 761A of the Corporations Act, a recognised affiliate of ASX Clear. Recognition as a qualified affiliate continues for the purposes of ongoing jurisdiction in relation to that part of the business which is or was under the supervision and control of the Affiliate or Approved Representative.
- (m) any wholesale client agreement previously lodged with ASX under the Old ASX Business Rule 7.3.1.5 continues in effect and is deemed to have been provided to ASX Clear under Rule 7.1.3.

Introduced 11/03/04 Origin OCH 1A.2.1 Amended 10/06/04, 01/08/05

23.2.2 Effect of transition on existing rights and obligations

Rule 23.2.1 does not affect any accrued rights which ASX, ASX Clear or any other person has against an Existing Clearing Participant or any other person under the Old ASX Business Rules or the OCH Rules or any accrued obligations which the Existing Clearing Participant or any other person has under the Old ASX Business Rules or the OCH Rules to ASX, ASX Clear or to any other person. Without limiting this Rule 23.2.2, following the Effective Time or Implementation Date as the case may be:

- (a) ASX will continue to have jurisdiction in respect of an Existing Clearing Participant and any Responsible Executive, Existing Affiliate and Existing Approved Representative concerning any conduct or any failure to comply with the Old ASX Business Rules which occurred before the Effective Time;
- (b) OCH will continue to have jurisdiction in respect of an Existing Clearing Participant and any Responsible Executive, Existing Affiliate and Existing Approved Representative concerning any conduct or any failure to comply with the OCH Rules which occurred before the Implementation Date;
- (c) the Existing Clearing Participant continues to be bound by any warranty, undertaking or indemnity given by the Existing Clearing Participant under the Old ASX Business Rules or the OCH Rules to ASX, OCH, or any other person;
- (d) any authority to act granted by an Existing Clearing Participant to OCH under the OCH Rules is taken to be granted by the Existing Clearing Participant under these Rules;

- (e) any condition, limitation or restriction imposed on an Existing Clearing Participant or any waiver granted to an Existing Clearing Participant under the OCH Rules are taken to be imposed or granted under these Rules;
- (f) other ASX business rules and OCH Rules continue to apply in respect of the Existing Clearing Participant and any Responsible Executive, Existing Affiliate and Existing Approved Representative to the extent required to give effect to paragraphs (a), (b), (c), (d) and (e); and
- (g) the business rules of ASX continue to apply to the Existing Clearing Participant and any Responsible Executive, Existing Affiliates and Existing Approved Representatives to the extent that the Existing Clearing Participant continues to be a Participating Organisation of ASX.

Introduced 11/03/04 Origin OCH 1A.2.2 Amended 10/06/04

23.3 AFFILIATE BASED CP – END OF AFFILIATE STATUS AND APPROVED REPRESENTATIVES

23.3.1 Recognition ceases at Recognition End Date

On the Recognition End Date, ASX Clear will cease to recognise:

- (a) Affiliates as "Affiliates"; and
- (b) Approved Representatives as "Approved Representatives".

Introduced 11/03/04 Origin OCH 1A.3.1

23.3.2 Effect of end of recognition

The end of recognition under Rule 23.3.1 does not affect any accrued rights which ASX Clear or other persons have against an Affiliate or Approved Representative or any accrued obligations which the Affiliate or Approved Representative has to ASX Clear or to other persons. Without limiting this Rule 23.3.2, following the Recognition End Date:

- (a) ASX Clear will continue to have jurisdiction in respect of the Affiliate or Approved Representative concerning any conduct or any failure to comply with the Rules which occurred before the Recognition End Date;
- (b) the Affiliate or Approved Representative continues to be bound by any warranty, undertaking or indemnity given by the Affiliate or Approved Representative under the Rules;
- (c) other Rules continue to apply in respect of the Affiliate or Approved Representative to the extent required to give effect to paragraphs (a) and (b); and
- (d) the Participant remains responsible for each Affiliate and Approved Representative involved in its business in accordance with Rule 4.2.2.

Introduced 11/03/04 Origin OCH 1A.3.2

23.4 AFFILIATE BASED CP – ONGOING COMPLIANCE DURING TRANSITIONAL PERIOD

23.4.1 Transitional arrangements

Until its Recognition End Date:

- (a) an Affiliate Based CP must continue to have as directors the number of Affiliates required under the Old ASX Business Rules and the majority of those directors must be resident in Australia;
- (b) an Affiliate Based CP is not required to comply with Rule 4.22, nor any other requirement under these Rules in respect of "Responsible Executives";
- (c) Rule 4.8.1 does not apply, but the Affiliate Based CP must have appropriate management structures in place to ensure that its directors and Affiliates have adequate supervision and effective control over all parts of the Participant's business, wherever the business is located (and keep accurate records of its management structure and its allocation of responsibilities among its directors and Affiliates);
- (d) Rule 4.8.2 does not apply to the Affiliate Based CP, but the Affiliate Based CP must ensure that any branch office of the Affiliate Based CP continues to be supervised by an Approved Representative or an Affiliate, as was required under the Old Recognition Rules;
- (e) an Affiliate Based CP may apply to have a person recognised as an Affiliate, or registered as an Approved Representative and ASX Clear will grant that recognition or registration if the person complies with the requirements for recognition and registration of Affiliates and Approved Representatives which existed under the Old Recognition Rules;
- (f) each Affiliate and Approved Representative must continue to comply with the requirements for the recognition and registration of Affiliates and Approved Representatives which existed under the Old Recognition Rules;
- (g) each New Affiliate and New Approved Representative will be regarded as "Affiliates" and "Approved Representatives" respectively for the purposes of these Rules; and
- (h) the Affiliate Based CP must ensure that each Affiliate and Approved Representative involved in the business complies with any continuing education requirements prescribed by ASX Clear.

For the purposes of this Rule 23.4.1, any obligation to comply with a requirement which existed under the Old Recognition Rules, is to be construed as an obligation to comply with that requirement as if a reference in the relevant Old Recognition Rule to the "Exchange" were a reference to "ASX Clear".

Introduced 11/03/04 Origin OCH 1A.4.1

23.4.2 Election to comply with new requirements

An Affiliate Based CP may elect by giving notice in writing to ASX Clear, to no longer rely on the transitional arrangements under Rule 23.4.1. Once an Affiliate Based CP has made that election, it may not revoke it.

Introduced 11/03/04 Origin OCH 1A.4.2

23.4.3 Compliance following end of recognition transitional period or election under Rule 23.4.2

Following the Recognition End Date, ASX Clear may terminate the admission of the Affiliate Based CP as a Participant unless it complies with all of the requirements of Rule 3 and Rule 4.

Introduced 11/03/04 Origin OCH 1A.4.3

23.4.4 Extension of Transitional Arrangements

ASX Clear may extend the Recognition Transitional Period in respect of a particular Affiliate Based CP following receipt by ASX Clear of a request in writing from the Affiliate Based CP.

Introduced 11/03/04 Origin OCH 1A.4.4

23.4.5 Interpretation of Rules – Regulated Persons

In applying the Rules during the Recognition Transitional Period, a reference in the Rules to a Regulated Person includes a reference to an Affiliate and Approved Representative.

Introduced 11/03/04

23.5 AFFILIATE BASED CP – APPROVED REPRESENTATIVES

23.5.1 Change of details

An Affiliate Based CP must notify ASX Clear of the following events within 2 Business Days after the event occurs:

- (a) any change of name or residential address of an Approved Representative; or
- (b) any termination of the engagement of the Approved Representative, the date of that termination and the reasons for that termination; or
- (c) the date of cancellation of a proper authority held by an Approved Representative from the Affiliate Based CP.

Introduced 11/03/04 Origin OCH 1A.5.1

23.5.2 Cancellation of registration

If in the opinion of ASX Clear:

- (a) an Approved Representative has failed adequately to supervise Employees of an Affiliate Based CP and the failure has contributed to a breach of the Rules by the Affiliate Based CP or any of its Employees; or
- (b) an Approved Representative has not been engaged in the derivatives business of the Affiliate Based CP for a period of 12 months; or
- (c) an Approved Representative no longer complies with the requirements for registration under the Old Recognition Rules,

ASX Clear may, subject to Rule 23.6, cancel the registration of the Approved Representative.

Introduced 11/03/04 Origin OCH 1A.5.2

23.5.3 Notice of cancellation

ASX Clear must notify the Approved Representative and the Affiliate Based CP of the cancellation of the registration under Rule 23.5.2.

Introduced 11/03/04 Origin OCH 1A.5.3

23.6 APPEALS FROM DECISIONS OF ASX CLEAR

23.6.1 ASX Clear to give reasons

Where:

- (a) an Affiliate Based CP applies for a person to be registered as a New Approved Representative under Rule 23.4.1(e) and ASX Clear decides to refuse to register that person as a New Approved Representative;
- (b) an Affiliate Based CP applies for a person to be recognised as a New Affiliate under Rule 23.4.1(e) and ASX Clear decides to refuse to register that person as a New Affiliate;
- (c) ASX Clear decides to cancel the registration of an Approved Representative of an Affiliate Based CP,

ASX Clear must give notice to the Affiliate Based CP of the decision and the reasons in writing for its decision.

Introduced 11/03/04 Origin OCH 1A.6.1

23.6.2 Right of Appeal

The Affiliate Based CP may appeal to the Appeal Tribunal against a decision referred to in Rule 23.6.1 in accordance with the provisions of the ASX Enforcement and Appeals Rulebook.

Introduced 11/03/04 Origin OCH 1A.6.2 Amended 31/03/08

23.7 TRANSITIONAL ARRANGEMENTS FOR PARTNERSHIPS

23.7.1 Application

This Rule 23.7 applies to an Existing Clearing Participant which is a partnership.

Introduced 11/03/04 Origin OCH 1A.7.1

23.7.2 Admission Requirements

- (a) Subject to paragraph (b), Rules 3.2.1(a) and (b) do not apply to an Existing Clearing Participant which is a partnership but the other Admission Requirements (as modified by this Rule 23.7) apply.
- (b) a Participant which is a partnership will cease to be admitted as a Participant from the first anniversary of the Implementation Date.

Introduced 11/03/04 Origin OCH 1A.7.2

23.7.3 Conditions

Without limiting the power to impose conditions under Rule 3.1.4, ASX Clear may impose conditions on admission which it considers appropriate to address issues arising from the use of a partnership.

Introduced 11/03/04 Origin OCH 1A.7.3

23.7.4 Partnership treated as separate person

These Rules apply to the partnership as if it were a person. In addition, the obligations which are imposed on the Existing Clearing Participant are imposed on each partner, but may be discharged by any of the partners.

Introduced 11/03/04 Origin OCH 1A.7.4

23.7.5 Breach of Rules

Any breach of a Rule that would be a breach by the partnership, or by any partner, is taken to have been a breach by each partner.

Introduced 11/03/04 Origin OCH 1A.7.5

23.7.6 Change in composition of partnership

A change in the composition of the partnership does not affect the continuity of the partnership. No partner of a Participant may be a body corporate.

Introduced 11/03/04 Origin OCH 1A.7.6

23.7.7 Overseas partnerships

Where the partnership is formed or resident outside Australia, or any partner is resident outside Australia, ASX Clear may impose requirements similar to those which apply under Rule 3.8 and Rule 4.2.

Introduced 11/03/04 Origin OCH 1A.7.7

23.7.8 Disciplinary action

ASX Clear may take disciplinary action or enforcement action under Rule 19 against a Participant which is a partnership in the name of the Participant without taking action against each partner in the partnership. If the Participant is determined pursuant to Rule 19 to have contravened the Rules or to have engaged in Unprofessional Conduct, each partner is jointly and severally liable to pay any penalty imposed and any other sum directed to be paid to ASX Clear and to ensure that any other sanction imposed by the Old Tribunal (as defined in Rule 19.20), ASX Clear or any Appeal Tribunal is enforced and implemented.

Introduced 11/03/04 Origin OCH 1A.7.8 Amended 01/08/10

23.7.9 Interpretation of Rules

In applying the Rules to the partnership:

- (a) a reference in a Rule to a "director" is taken to be a reference to a "partner";
- (b) a reference in a Rule to a "Related Body Corporate" of an Existing Clearing Participant (or an applicant) is taken to be a reference to a "Related Party" of any partner;
- (c) a reference in a Rule to an "Employee" is taken to also include a reference to a partner;
- (d) a reference in a Rule to the Existing Clearing Participant (or the applicant) being "incorporated" somewhere is taken to be a reference to them being "formed" there; and
- (e) paragraph (a) of the definition of "Controller" the reference to the total votes attached to voting shares is taken to be a reference to the total voting power in the partnership.

Introduced 11/03/04 Origin OCH 1A.7.9

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