



31 July 2024

Ms Nikki Swinson
General Manager Participant Compliance
ASX Limited
20 Bridge Street
Sydney NSW 2000

By email

Dear Ms Swinson

ASX 24 and ASX Clear (Futures) – Change to position reporting framework and review and refresh of operating rules

AFMA welcomes ASX's proposed updates to the ASX 24 and ASX Clear (Futures) position reporting framework and proposed changes to the operating rules.

We appreciate the engagement of the ASX team with the industry and interest in improving the framework.

We encourage ASX to continue its update and reform processes and look at further reform including:

- Refining the daily settlement process for futures and options;
- Updating the procedure for executing pre-negotiated orders; and
- Introducing procedures for the execution of cross trades.

We would be pleased to provide further information on any of the matters in this submission if that would be of assistance.

Yours sincerely

Damian Jeffree
Head of Financial Markets, Exchanges and Digital

1. Proposed amendments to the reporting framework for Open Positions in ASX 24 Derivatives Market Contracts (and related changes)

1.1. Transfer of Position Reporting Obligation to Clearing Participants

AFMA supports this proposal as it reflects the current practical reality. We understand the use of confidential accounts is low.

1.2. Exceptions to Beneficial Ownership Reporting

Members report that implementing this proposal would require an amendment to clearing participants' position reporting systems and consideration of documentation amendments, and client outreach to facilitate direct reporting between confidential clients and the ASX.

AFMA understands that confidential accounts would be identified during client onboarding. Client agreements would be updated to require a client to notify the clearing participant if they have any confidential accounts.

Indicatively, a 12-month period is expected at a minimum to allow sufficient time for participants to work through the technological, commercial, and legal implications of this change.

AFMA seeks confirmation that confidential accounts holders will be required to provide the same data fields in their DBOR reporting in the same format as Clearing Participants.

The ASX suggestion that clearing participants might require their clients to provide information directly to the ASX is practically sound. However, it places clearing participants in a potentially difficult position as intermediary between the ASX and a client that the ASX cannot compel.

We request further discussion on what would constitute "appropriate procedures" in 46A(2)(a)(iv) to give clearing participants more certainty. For example, confirmation that the requirement would be satisfied by a contractual term requiring that relevant information was passed to the ASX by a confidential client.

If a confidential client ceased providing information, the expectations on clearing participants should be agreed as part of this consultation.

Suspense Accounts

AFMA supports the proposals in relation to suspense accounts and does not expect any significant implementation challenges.

To support consistent application, we suggest ASX provide additional guidance for clarity on the interpretation of 'House suspense account' and examples of their use so that the

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industry is clear on ASX's expectation on the operation of suspense accounts. For example, House Suspended Account might be understood to refer to pending accounts where positions are tagged with the house account as the Beneficial Owner. These positions do get reported as "Client" in DBOR.

1.3. DBOR Controller and LEI

We note this data might already be readily accessible on a pre-existing centralised platform. In the event such a system is not used, then a 24-month transition period would give sufficient time for the uplift and testing necessary to accommodate these extra data fields. Members note this change could involve updates to a substantial number of client accounts.

AFMA suggests that ASX should aim to align to standard industry practice in the submission of DBOR controller and LEI information. Aligning to industry standards will reduce the technological uplift required to implement the proposed changes and create efficiencies for clearing members with global business models. One example of such standard industry practice is the reporting structure of the FIA Tech OCR ID platform.

In the event a centralized system is not used, Clearing Participants will be reliant on the information that is provided by clients and if the client of the Clearing Participant is operating an Omnibus Account, there is further reliance on downstream entities providing the necessary information up the chain. We note this is an onerous process.

We request further information on whether similar LEI requirements will apply to confidential account holders.

AFMA requests additional information on the interpretation of DBOR Controller and Beneficial Owner, including clarification of who the term Controller refers to. For example, does Controller mean Order Placer.

1.4. Daily Close Outs

There are a range of views on proposed terminology changes.

Some firms do not foresee any challenges arising from the proposed terminology and would welcome the changes.

Others suggest that the changes could deviate from the global market standard terms for such accounts, and this could create complexity and potential confusion for counterparties who may not be familiar with the particulars of the ASX approach. They note that legal documents which reference such account types would have to be amended, and are of the view it is not sufficiently clear why this change is being proposed or what the perceived benefit will be with respect to the efficiency of the existing approach.

Given the challenges, some participants query the net benefit.

If ASX proceeds with the proposed changes we would request further worked examples on how the account terms should be applied to different client types, as well as guidance in the Procedures relating to this obligation, in a similar manner to the current form of ASX Clear (Futures) Procedures Determination and Practice Note 46.5.

Potential opportunity for increased global consistency and simplification

AFMA notes that the method prescribed by ASX for performing close-outs and ultimately calculating Open Interest (OI), is different to the majority of other global exchanges/clearing houses.

The major US and European markets clearing houses allow close outs to be done at a beneficial owner level rather than the lower “trading desk” level currently prescribed. Exceptions may be granted for certain accounts to maintain back-to-back positions throughout the life of a contract.

This international standard approach has the advantage of reduced complexity and as a result it does not require the same level of detailed guidance for its implementation; and has a much lower risk of inconsistent application by different firms.

For example, while additional guidance has been provided, a Clearing Participant may interpret the level of a trading strategy (individual trading desk) vs risk being managed (wider division) to be different or conflicting. It may also be challenging for a Clearing Participant to review, and challenge close-out instructions being provided by owners of confidential accounts.

AFMA encourages ASX to consider alignment with the standard approach of global peer exchanges to realise these benefits and efficiencies.

The requirement to monitor and notify ASX of changes to OI of > 5% as a result of a position transfer, would create a large operational burden for an event that occurs infrequently.

We are concerned that for contracts with a low OI (such as electricity) it would be easy to exceed the 5% threshold because of a minor transfer. Monitoring of transfers that do exceed the 5% threshold could be performed, however it would be costly and time consuming to implement such a detection control.

AFMA suggests that ASX consider providing guidance, rather than prescribing in a rule, on when ASX Compliance should be notified of events that have the potential to have a large OI impact. These events may include organisational changes or account restructures and are often raised by a client prior to a transfer being effected.

AFMA notes that internal transfers would no longer impact OI, and this could result in a more stable OI, if close outs at the beneficial owner level were permitted.

Some participants alternatively would support a rule whereby internal transfers and a consequent close out of positions could not be done a certain number of days before the last trading day of the contract. They suggest this would be a more readily enforceable and transparent way to ensure that leading up to the expiry of the contract, that the Open Interest is accurate and will not be impacted by such transactions. Otherwise, Open Interest fluctuates on a daily basis and there could be an arbitrariness and complexity in determining which measure to use.

Account Naming Changes

We do not have an issue with this proposal but note there would be some administrative work to reflect the changes.

1.5. Changes to Allocations and Designations

We support the transfer of the primary obligation to Clearing Participants.

Prompt Allocation or Designation Exception

We support this change as an appropriate response to the issues posed by clients operating outside the prescribed times.

Trades are only novated and registered in the Clearing Participants name when the trades are accepted on the exchange. At this point, we agree that the sourcing of the allocations, if not apparent from the references tagged to these trades, should reside with the Clearing Participant. The proposed change “rather than having a prescribed time in the morning by which allocations should occur, the requirement for Participants will be to promptly allocate or designate once that client instruction is received, where Exchange Systems are open/available”; is welcomed as some clients can only provide allocations at a certain time the next day due to constraints on their end.

1.6. Position and Exercise Limits

Obligations should reside with the Clearing Participants as they are aware of the actual open positions, and we support the ASX also addressing the situation whereby a client holds positions across multiple Clearing Participants as each Clearing Participant will not be aware of the positions with the other Clearing Participants. The responsibility should be on the client to ensure that collectively they are not in breach. We propose having clarification in the rules on who the obligation to abide by the expiry position limits should reside with, in the event that the market user maintains Open Positions across multiple Clearing Participants.

We endorse the addition to Rule 46B confirming that any directed reduction in open positions will be based on the ratio of open positions held by each Clearing Participant.

Participants note concerns in relation to the proposal to amend rule 3402 to the effect that a Trading Participant must not enter into a Derivatives Market Transaction, either on its own behalf or on behalf of a client, that would prevent a Clearing Participant from complying with the Position Limit obligation. This proposed rule change may be impractical and will be difficult to implement, particularly in cases where a Participant is

executing orders and then giving them up to a third-party clearer. Current market practice is not to perform a position limit check prior to executing or clearing orders.

AFMA suggests that ASX use consistent wording to that used for position reporting, and use “DBOR Controller” rather than the term “Market User”.

1.7. Clearing Guarantee

AFMA supports the proposed updates to the Clearing Guarantee.

The Guarantee should be commensurate to the liability associated with Participant’s clearing activity and not left uncapped.

Grain Minimum Terms

We support the transfer of this obligation but note there would be some administrative work to reflect the changes.

2. ASX Clear (Futures) Operating Rules Review and Refresh: Key themes

1. Appointment of ASX Clear (Futures) as Agent Transfer of Position Reporting Obligation to Clearing Participants (reference – marked up ASX Clear Futures Rule 10.2 to 10.7, pg 62 – attachment 1)

The Rule provides more freedom to ASX to transfer the open positions of a clearing participant (on its own or on behalf of the clients) to another participant in the case that the original Clearing participant has resigned, suspended, or terminated. We understand that through this rule, ASX will help coordinate other continuing clearing participants to risk manage the open positions.

However, it should not allow the forced allocation of positions to the replacement clearing participant. Therefore, we would advise ASX to clarify that transfer of positions would be subject to the consent of the replacement clearing participant.

This will ensure that the replacement clearing member has the ability to risk manage these positions. Further, we would also request ASX to confirm that the timelines for the transfer arrangement (i.e., 24 hours for listed contracts and within 48 hours for IRS contracts during member default) would continue to be applicable and any failure to do so (in absence of identifying any replacement clearing member) would be closed out.

2. Powers of ASX Clear (Futures) Upon A Default and Determination of a Loss (reference – marked up ASX Clear Futures Rule 72.1 (ab), pg123 - attachment 1)

At a high-level members note a concern over the broad scope of these powers and note the need for reassurances around “reasonable” use by ASX. To set these limits we suggest a benchmark to other CCP’s. Clarification should be made that limits the powers to Participant activity.

ASX is introducing a new express power allowing ASX Clear (Futures) to sell a defaulter’s portfolio rather than auction or close out. This new power will apply to ASX Clear too. From the FIA call, it is understood that selling a defaulter’s portfolio is a complementary tool for closing defaulter’s position in addition to exchange close out and Auction.

Further, it was explained that Defaulter’s portfolio would be sold where exchange close out or Auction are not practical i.e., for products where there are very few participants (e.g. 2 – 3 clearing members). We understand that for such products, it may save time if the defaulter’s portfolio is sold directly rather than going through an auction. We would recommend the following:

- **Criteria:** We understand that both – selling defaulter’s portfolio as well as Auction, would be used for less liquid products. Further, it seems the sale of the portfolio seems like a small-scale auction where continuing participants who are also active in the defaulted contracts (expected to be few in numbers), would be invited to buy the defaulter’s portfolio. We therefore strongly recommend ASX to introduce clear criteria on when direct sell for defaulter’s portfolio would be applied (like market share of largest participant, Open interest, no. of active participants) before Auction. Clarity in default management tools will help the CCP to be well prepared to resort to the most appropriate tool to quickly close defaulter’s positions.
- **Governance and establishing DMG:** Size of loss resulting from the close-out of a defaulter’s portfolio and the extent of the default waterfall to be used, will depend upon the liquidation price determined following the use of the close out tool. Given that the Guarantee Fund could be at stake of being applied, we would request ASX to establish adequate governance around the power to sell defaulter’s portfolio. We would suggest ASX establish a DMG with member participation which would assist ASX in ensuring the choice of the tool as well as pricing so that non-defaulter’s Guarantee fund is optimally applied. We acknowledge that ASX Clear Futures has DMG for the OTC portfolio but is not present for the F&O segment. We would also recommend ASX introduce DMG for F&O portfolio to align it with the OTC segment as well as with the [FIA/ISDA recommendations](#) on the Governance of CCP Default Management Processes and the Role of Default Management Groups.
- **Client participation:** We would encourage ASX to confirm in the rules that client involvement in default management would be restricted during Auction only and clients should not be engaged for direct sale of defaulter’s portfolio. This would ensure that any client participation during member default incorporates its Clearing member’s consent.