26 July 2024

To: ASX (Attn: Nikki Swinson)

Dear Sirs/Madams

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

FIA[1] appreciates the opportunity to provide comments on ASX's proposed "Change to position reporting framework and review and refresh of operating rules".

Please find below our comments. Unless otherwise defined, capitalised terms used in this letter will bear the same meanings ascribed to them in the consultation paper.

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 from Trading Participants to Clearing Participant

1.2. Exceptions to Beneficial Owner reporting

Question 1 **If Clearing Participants are required to obtain client instructions to support continued reporting of Confidential Accounts, how long should the transition period be? Please include the rationale to support your expected timeframe.**
Specifications regarding client instructions and the necessary frequency for reaffirming requests for ongoing reporting must be clearly defined. These details will play a crucial role in shaping the development and implementation of a standardized process, thereby impacting the transition period required.

[1] FIA is the leading global trade organization for the futures, options and centrally cleared derivatives markets, with offices in Brussels, London, Singapore and Washington, D.C. FIA's membership includes clearing firms, exchanges, clearinghouses, trading firms and commodities specialists from about 50 countries as well as technology vendors, law firms and other professional service providers. FIA's mission is to support open, transparent and competitive markets, protect and enhance the integrity of the financial system, and promote high standards of professional conduct. As the principal members of derivatives clearinghouses worldwide, FIA's clearing firm members play a critical role in the reduction of systemic risk in global financial markets. Further information is available at www.fia.org.

Additionally, the reporting of Confidential Accounts is contingent upon specific client needs and circumstances. Client outreach and documentation modification will be required to facilitate direct reporting between confidential clients and ASX.

Clearing Participants will also need to undertake significant system adjustments or even potentially develop entirely new systems to comply with the proposed changes.

Given these considerations, pinpointing an exact timeframe is challenging. However, as a provisional estimate, a minimum transition period of 12 months should be considered to afford Clearing Participants adequate time to navigate the technological, commercial, and legal requirements associated with these changes.

Question 2

What processes will Clearing Participants need to have in place to be able to identify and notify ASX on Confidential Accounts?

Processes must be established from the initial onboarding phase to accurately identify accounts as Confidential Accounts, ensuring appropriate tagging. This tagging must populate downstream systems and static/reference data, and should prompt alerts for exchange-facing and compliance teams upon the activation of such accounts. Furthermore, existing records will require updates to facilitate the identification of Confidential Accounts. Processes must also be implemented for the systematic collection and secure storage of their responses and acknowledgements.

Clearing Participants will depend on their clients to provide timely instructions and update static data in their systems and reports to notify ASX. Therefore, considerations regarding the frequency, level of detail required, and the method of notifying ASX must be carefully addressed in determining the operational processes and average timeframes to run them.

We would also like to highlight that while ASX's suggestion for Clearing Participants to require their clients to directly provide information to ASX is practical in principle, it may place Clearing Participants in a potentially invidious position. As intermediaries between ASX and clients, Clearing Participants could face challenges since ASX cannot compel clients to disclose information.

Further guidance from the ASX on what constitutes "appropriate procedures," as outlined in FR 46A(2)(a)(iv), would greatly benefit Clearing Participants by providing clarity and certainty. For instance, would the ASX consider a contractual requirement mandating the transmission of relevant information by confidential clients to the ASX as sufficient?

Finally, does the ASX have a defined stance on the actions it would take in cases where a confidential client ceases to provide required information?

Question 3 **If Clearing Participants are required to update reporting to ASX to identify Confidential Accounts, how long should the transition period be?**
The transition period should span at least 12 months to allow for the development of the necessary technologies enabling the reporting of Controllers, LEI details, and Confidential Parties. Clearing Participants must also (i) identify Confidential accounts and (ii) require clients to request exceptions while acknowledging their obligation to provide Beneficial Owner details to ASX upon request. Furthermore, this work must be integrated alongside existing or new development initiatives that may emerge before the proposed changes are implemented. Additionally, we recommend that ASX leverage existing market-wide platforms accessible to counterparties which functionalities capable of supporting detailed reporting requirements. This approach aims to streamline and enhance the efficiency of the reporting process.

Question 4 **Please provide details of any challenges that you expect Clearing Participants may face in relation to the proposed changes to the operation of suspense accounts, specifically where Open Positions must be allocated to a House suspense account if not able to be reported in the name of the client.**
The challenges faced by Clearing Participants vary depending on their current operational setup and processes. One issue arising from this model is that the Executing Broker assumes all risk and liability for margin payments until allocations are finalized. This arrangement can lead to unfair commercial practices, especially for trading participants who may not be able to request margins from clients during volatile periods. These participants are then required to cover any intraday or overnight calls using their own funds. Additional clarity from ASX regarding House suspense accounts would be beneficial. Clear guidance or illustrative examples would help clarify ASX's expectations regarding the operation of suspense accounts within the industry. For instance, some members interpret House Suspense Account to include their Pending accounts, where any positions reported are tagged with the member's pending account as the Beneficial Owner. These positions are then reported as "Client" in DBOR. We also seek clarity on possible scenarios where open positions cannot be allocated to a suspense account in the name of the client. For instance, there may be operational challenges preventing a broker from giving up trades (belonging to a client) to another clearing broker. Alternatively, trades managed by a fund manager might be held in an internal "wait/average account" pending allocation to underlying

funds. In such cases, we understand that these trades should not be allocated to the House suspense account and seek ASX's confirmation of our understanding.

1.3. Provision of DBOR Controller and Legal Entity Identifiers

Question 1 **What challenges do you expect that Clearing Participants may face in relation to the identification of a DBOR Controller or a Beneficial Owner?**
We urge ASX to provide clearer guidance on the interpretations of DBOR Controller and Beneficial Owner. Specifically: • "Controller"- Please clarify who this term refers to (e.g. does it denote the order placer?). • "Beneficial Owner" - Does this designation reflect legal ownership or beneficial ownership? From a participant's perspective, exposure typically relates to legal ownership, which may or may not align with beneficial ownership. There are scenarios where the beneficial owner is undisclosed or unknown to the Clearing Participant. The proposed definition of beneficial owner as the ultimate owner suggests a requirement for a look-through approach. We recommend aligning with comparable reporting standards in other jurisdictions, particularly referencing the US CFTC reporting requirements. The CFTC defines the controller as the individual who directs trading activities, such as executing trades for the beneficiary. Mere influence over transaction decisions does not meet the US standard for defining a controller. Furthermore, we wish to highlight that many Clearing Participants operate globally. Variances in reporting requirements between ASX and other jurisdictions necessitate these global organizations to maintain multiple sets of static and reference data for compliance. This approach increases costs and poses challenges to data consistency and quality. Requests for Clarification- Omnibus Accounts We seek clarification on the following: • There may be instances where clients are omnibus account operators, potentially resulting in multiple DBOR Controllers. How should this be reflected in the "DBOR Controller" field? • In cases where a client operates as an omnibus account holder, Clearing Participants do not have visibility into the Beneficial Owner(s) associated with the account. Under these circumstances, please confirm if Clearing Participants can classify such client accounts as "Confidential Accounts" in DBOR, provided

they satisfy the new requirements set out in paragraph 1.2 (*Exceptions to Beneficial Owner reporting*) of the consultation paper beforehand?

Question 2 **If Clearing Participants are required to update client records to identify and include the DBOR Controller and/or Beneficial Owner in daily DBOR reporting, how long should the transition period be? Please include the rationale to support your expected timeframe.**
We recommend a transition period of 12 to 18 months at a minimum. During this time, system enhancements would be necessary to record this information. There are also members who would need to complete the DBOR build in another of their systems as they currently leave this field blank in the existing DBOR report. Additionally, members must gather information on DBOR Controllers and LEI of clients. Updates to reports and static data in systems will also be needed, along with required client outreach efforts. However, it's crucial to clarify expectations regarding the reporting of suspense accounts before further comments can be made (refer to response above). Moreover, the transition period for these changes should be considered holistically rather than on an item-by-item basis. We believe ASX should strive to align with standard industry practices for submitting DBOR controller and LEI information. Such alignment will minimize the technological upgrades needed to implement the proposed changes and streamline operations for clearing members with global business models.

Question 3 **If Clearing Participants are required to update reporting requirements to include LEIs, how long should the transition period be? Please include the rationale to support your expected timeframe.**
We recommend a transition period of 12 months at a minimum. During this time, Clearing Participants will need to gather information on DBOR Controllers and LEI of clients, as well as undertake system build/enhancement, testing, and deployment. Please refer to our response to Question 2 above regarding the importance of considering these changes holistically rather than on an item-by-item basis.

Additionally, we urge ASX to align with standard industry practices for submitting DBOR controller and LEI information. Separately, we would like to reiterate a point that was raised during the FIA member session with ASX on 24 June (**FIA Member Session with ASX**) regarding FTP transfer of DBOR. Using PGP is outdated technology, and the software required has known vulnerabilities. File encryption via FTP is not common practice in the market, as FTP itself provides secure file transfer capabilities.

1.4. Daily Close-Out

Question 1 **ASX proposes to change the existing terminology used to describe account types to avoid confusion with similar terms already used in the ASXCFORs and external facing documentation. What challenges (if any) do Clearing Participants consider may arise from ASX changing the terminology?**
Members generally do not have issues with this proposal. However, that there will be some administrative work involved to implement the changes. This includes amending legal documents that reference such account types to align with the new terminology. It would also be helpful if the ASX could provide 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.

Question 2 **Do Clearing Participants see challenges in meeting the three (3) day notification timeframe prior to completing an internal transfer that may result in a 5% change in Open Interest? If so, what are these challenges and are there other ways that this could be managed for the benefit of the market?**
While internal transfers are a regular part of operations, the requirement to notify ASX three days in advance of completing such transfers is not market standard and presents significant operational challenges. Clients may instruct brokers to execute internal transfers immediately or within a very short notice period, especially nearing the expiry period of contracts. We recommend considering a less prescriptive approach, potentially utilising terms like "material" or "significant," with detailed guidance provided by ASX. This approach would prevent inadvertent breaches of rules and ensure that participants can accommodate last-minute changes without delays in client transfers.

In addition, open interest fluctuates daily, making it challenging to accurately determine a 5% fluctuation. Clarity is needed on:

- Which snapshot of open interest Clearing Participants should refer to when reporting a 5% or more change (e.g., previous day's close).
- The timing and level of OI published by ASX (e.g. day-end), and whether it is published on a contract month level or across all months.

We also understand that this proposal introduces a notification requirement where there is a 5% or more change in OI, but not pre-approval requirement. Please confirm this understanding.

Finally, during the FIA Member Session with ASX, a scenario whereby commodities clients express a genuine intention to maintain their accounts gross (with explicit instructions and rationale to Clearing Participant provided) was highlighted. The discussion sought clarification from ASX on whether these clients could be permitted to retain their back-to-back open positions and only net them down upon expiry. As these positions do not represent genuine open interest, allowing them under the condition of netting down in a Clearing Participant's systems (e.g. Genium) to ensure accurate OI representation and reporting gross in DBOR was proposed. We would appreciate ASX's view on this matter.

1.5. Changes to Allocations and Designations

Members generally favour this change, particularly considering that clients can only provide allocations by a specific time the following day due to their operational constraints.

We request clarification from ASX on whether this rule change also applies to the T+1 night session EFP booking.

1.6. Position and Exercise Limits

Members generally support this change and the realignment of rules related to position and exercise limits. It is recognized that Clearing Participants should bear the responsibility since they have visibility into actual open positions.

ASX's attention to addressing situations where clients hold positions across multiple Clearing Participants is also appreciated, as each Clearing Participants will not be aware of positions held elsewhere. The onus should rightly be on the client to ensure collective compliance across all Clearing Participants.

We propose clarification in the rules regarding where the obligation to adhere to expiry position limits should lie when a client maintains open positions across multiple Clearing Participants.
In the meantime, we understand that Clearing Participants will not be held liable for breach scenarios if they inform clearing clients of their position limit utilization. Kindly confirm this understanding.

We also request for examples of "undesirable situations" when a market user holds positions across multiple CPs and concerns about expiry limits arise.

1.7. Clearing Guarantee

Members generally have no issues with the proposed transfer.

With respect to the Clearing Guarantee, we understand that Clearing Participants are responsible for ensuring the performance of all contracts they clear. However, other CCPs specify this in their rulebooks to ensure fair and consistent treatment across all participants.

We seek clarification on the reasons behind ASX requiring individual guarantees for each Trading Participant. In the event a trading participant has two Clearing Participants, CP A and CP B, and CP A defaults, will CP B assume responsibility as guarantor for the participant's trades cleared by CP A? Is there an independent legal opinion on this matter?

The Clearing Guarantee should also align with the Clearing Participant's liability associated with their clearing activities and should not be left uncapped.

2. ASX CLEAR (FUTURES) OPERATING RULES REVIEW AND REFRESH: KEY THEMES

2.1. Reflecting Current Practice

We appreciate ASX's efforts to streamline rules by removing redundancies, updating them to align with current practices and eliminating inconsistencies.

2.2. Enhancements to support continued compliance with the licence obligations of ASX Clear (Futures)

<u>Notification of Contact Details</u>
We recommend that ASX utilize mailing lists instead of individual emails to mitigate operational risks caused by turnover.

Express Power to Sell a Defaultor's Portfolio

CCPs should possess discretionary powers for their default management processes (DMP), ideally through the establishment of a Default Management Group. However, it is crucial that these powers are clearly articulated within the DMP guidelines.

Specifically, there needs to be explicit clarity on:

- The specific circumstances under which the CCP can or may opt for off-market close-out or close-out arrangements with selected parties.
- The criteria, methodology, and elements employed by the CCP to unilaterally determine the close-out price.

These guidelines and frameworks are essential not only to ensure market stability and fair practices but also to mitigate the risk of conflicts of interest. Such safeguards are vital for protecting the CCP from reputational damage and potential litigation risks. Historical incidents like the CM default at Nasdaq OMX in 2018 and crisis management cases involving LME Nickel underscore the importance of these safeguards.

From the FIA Member Session with ASX, it was understood that selling a defaulter's portfolio is a complementary tool for closing defaulter's positions in addition to exchange close-out and auctions. Further, it was explained that a defaulter's portfolio would be sold where exchange close-out or auction are not practical, such as for products with very few participants.

In light of the above, we recommend the following:

- **Criteria:** Clearly define when direct sale of a defaulter's portfolio would be applied, such as based on market share of the largest participant, open interest, and number of active participants, before resorting to an auction. Clarity in default management tools will help the CCP prepare to use the most appropriate tool to quickly close defaulter's positions.

- **Governance and Establishment of DMG:** Given that the Guarantee Fund could be at stake, ASX should establish adequate governance around the power to sell a defaulter's portfolio. We suggest ASX establish a DMG with member participation to assist in determining the choice of tool and pricing, ensuring optimal application of the non-defaulter's Guarantee Fund. While ASX Clear Futures has a DMG for the OTC portfolio, there is none for the F&O segment. We recommend ASX introduce a DMG for the F&O portfolio to align with the FIA/ISDA Recommendations on the Governance of CCP Default Management Processes.

- **Client Participation:** We encourage ASX to confirm in the rules that client involvement in default management is restricted to auctions only, and clients should not participate in the direct sale of a defaulter's portfolio. This ensures

that any client participation during member default incorporates their Clearing member's consent.

These measures will enhance transparency, efficiency, and fairness in CCP default management processes, thereby strengthening market confidence and resilience.

Emergency Situations

Emergency powers and end-of-waterfall recovery and resolution tools should be used cautiously.

The use of such tools (such as contract tear-up, VM gain haircutting, and forced position allocation/reduction/liquidation) and consequences should be clearly defined. Clear guidance is crucial for participants to assess and effectively manage their risks.

Public consultations represent a democratic and transparent approach to engage with market participants, fostering confidence in the market.

Provision of Information to ASX

With regard to access to records, we request further clarification to link reasonableness specifically to activities within the Australian Futures markets, taking into account ASX's current extended access based on financial considerations.

2.3. Alignment for Consistency

We appreciate ASX's efforts to streamline rules by removing redundancies, updating them to align with current practices and eliminating inconsistencies.

2.4. Accuracy, Transparency and Clarity

We appreciate ASX's efforts to streamline rules by removing redundancies, updating them to align with current practices and eliminating inconsistencies.

2.5. Deleting Redundant Rules

We appreciate ASX's efforts to streamline rules by removing redundancies, updating them to align with current practices and eliminating inconsistencies.

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Further Comments and Requests for Clarification

Regulation - ASX Clear (Futures) Operating Rule 9A

Can the wording of 9A.1.1 be clarified to indicate whether ASX will always take enforcement action for breaches of rules and procedures?

Appointment of ASX Clear (Futures) as Agent Transfer of Position Reporting Obligation to Clearing Participants - ASX Clear Futures Rule 10.2 to 10.7

This rule grants ASX more flexibility to transfer the open positions of a Clearing Participant (either directly or on behalf of clients) to another participant in cases where the original Clearing Participant has resigned, been suspended, or terminated. We understand ASX aims to facilitate coordinated risk management among other continuing Clearing Participants through this initiative. However, it is important to note that this rule should not permit the forced allocation of positions to the replacement Clearing Participant.

Therefore, we recommend that ASX clarify that the transfer of positions will only occur with the consent of the replacement Clearing Participant. This ensures that the replacement member retains the ability to effectively manage the risk associated with these positions.

Additionally, we kindly request ASX to confirm that the existing timelines for transfer arrangements (i.e., 24 hours for listed contracts and within 48 hours for IRS contracts in the event of a member default) will remain applicable. In cases where a replacement clearing member cannot be identified within the specified timeframe, any outstanding positions should be closed out.

License over Clearing Software - ASX Clear (Futures) Operating Rule 16.2

The newly proposed Rule 16.2(x) prohibits Participants from using the Licensed Software unlawfully or for unlawful purposes. However, if a Participant inadvertently or otherwise breaches an Operating Rule or Market Integrity Rule while clearing on the ASX platform, what are the implications? Should this addition also take into account the intent behind the breach?

Risk Consultative Committee - ASX Clear (Futures) Operating Rule 20

The first line of the rule states that ASX Clear (Futures) "will invite all Clearing Participants to participate in the Risk Consultative Committee subject to the procedures set out in the Procedures…". However, it also states that "ASX Clear (Futures) may invite Clients to participate in the Risk Consultative Committee in accordance with the Procedures." Please clarify.

We welcome the opportunity to work with ASX to address these comments. Please feel free to contact me, Stella Gan, Head of Operations, Asia Pacific at sgan@fia.org, or TzeMin Yeo, Head of Legal & Policy, Asia Pacific at tmyeo@fia.org should you wish to further discuss.

Yours

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