

10 April 2013

# Code of Practice for Clearing and Settlement of Cash Equities in Australia

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ASX Limited

ASX Clear Pty Limited

ASX Settlement Pty Limited

## 1 ASX's commitment

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*ASX is committed to ensuring Australia's clearing and settlement infrastructure is efficient, well-capitalised and well-regulated. ASX recognises the need to work with users to deliver world-class financial infrastructure for Australia and share the benefits of investment and growth with its customers.*

### 1.1 Purpose of this Code

- (a) ASX has put this Code in place to increase transparency and accessibility in the provision of clearing and settlement services for cash equities in Australia and to formalise avenues for regular and meaningful user engagement.
- (b) This Code builds on the principles contained in the Customer Charter of ASX in which ASX commits to:
  - (1) work with customers to deliver products and services that meet their needs and that provide them with choice;
  - (2) support Australia's aspiration to be globally competitive and become one of the leading financial centres in the Asia Pacific region;
  - (3) make its products and services available on a non-discriminatory basis and on reasonable commercial terms;
  - (4) manage its businesses and operations on a commercial basis to benefit its customers and provide appropriate returns to ASX shareholders;
  - (5) recognise its role as a provider of critical financial infrastructure to the Australian financial markets, and make the necessary investments to ensure it can fulfil this role and provide confidence to market participants, investors and regulators;
  - (6) run its operations in compliance with all legal and regulatory obligations; and
  - (7) maintain conflict handling arrangements that provide assurance and transparency about the way ASX conducts its business.

### 1.2 Clearing and settlement for Australian cash equity market

- (a) ASX Clear and ASX Settlement operate the sole licensed clearing and settlement facilities providing clearing and settlement systems and services for the Australian cash equity market. ASX Clear provides central counterparty clearing services for a range of financial products including cash equities and equity options. ASX Settlement provides services for the settlement of equities and other deliverable products. Clearing and settlement of cash equities is conducted through a shared operating system CHES.
- (b) ASX is committed to sharing with users of its services benefits and efficiencies arising out of the ASX group structure.

### 1.3 Scope of this Code

- (a) This Code deals with:
  - (1) the clearing and settlement services provided by ASX Clear and ASX Settlement for the Australian cash equity market; and
  - (2) the gateways and infrastructure supporting the provision of those services,
 as described and represented by the diagram in Appendix A.
- (b) Clearing and settlement services for cash equities are provided pursuant to the operating rules of ASX Clear and ASX Settlement, the TAS Legal Terms and settlement facilitation service agreements between ASX Settlement and ALMOs.
- (c) This Code does not deal with clearing and settlement services supporting either exchange-traded or OTC derivatives markets or OTC debt markets.

### 1.4 Development of this Code

- (a) This Code is being developed in consultation with users and in response to a report prepared by the Council of Financial Regulators and accepted by the Deputy Prime Minister and Treasurer on 11 February 2013.
- (b) The Council of Financial Regulators will carry out a public review of the Code's implementation and effectiveness, and ASX's adherence to it by early 2015.

## 2 The Forum

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*ASX is committed to meaningful engagement with users in respect of the ongoing development of the clearing and settlement infrastructure of the cash equity market in Australia. ASX recognises the importance of engagement with users to help ensure that the design and functionality of the clearing and settlement infrastructure of the cash equity market in Australia continues to meet users' needs and is consistent with relevant international best practice.*

### 2.1 Establishment

- (a) ASX will establish an advisory forum (**the Forum**) within 3 months of the commencement of this Code.
- (b) The first meeting of the Forum will be held no later than 30 November 2013.

### 2.2 Objectives

- (a) The objectives of the Forum are:
  - (1) to provide user input to the Boards of ASX Clear and ASX Settlement from a wide range of users in relation to ongoing investment in the design, operation and development of the core clearing and settlement infrastructure for the Australian cash equity market, including CHES;
  - (2) to consider any matters of common interest arising under the Code or in the principles set out in the report prepared by the Council of Financial Regulators; and

- (3) to provide a formal mechanism for the Boards of ASX Clear and ASX Settlement to report to users on their strategic plan and investment decisions in relation to the design, operating and development of the core clearing and settlement infrastructure for the Australian cash equity market, including CHES.
- (b) Members of the Forum will not consider or discuss any competitively sensitive information in contravention of the *Competition and Consumer Act 2010* (Cth).<sup>1</sup>

## 2.3 Membership

- (a) The Forum will consist of representatives of a wide range of user groups with a view to achieving a balance among the interests of the different user groups so that the Forum can function as an effective process for providing user input to the Boards of ASX Clear and ASX Settlement.
- (b) The Forum will consist of:
  - (1) up to ten members representing clearing participants and settlement participants;
  - (2) a member representing alternative market operators;
  - (3) a member representing the Australian Financial Markets Association;
  - (4) a member representing the Stockbrokers Association of Australia;
  - (5) a member representing system vendors;
  - (6) a member representing share registries;
  - (7) a member representing payment system service providers;
  - (8) a member representing custodial service providers;
  - (9) a member representing the funds management industry;
  - (10) a member representing listed companies;
  - (11) a non-executive member of the Boards of ASX Clear and ASX Settlement (Forum Chair); and
  - (12) a non-executive member of the Board of ASX Limited.
- (c) ASX will invite users to nominate representatives as part of the selection process for appointment to the Forum.
- (d) ASX will consult user groups on the nominees for the Forum to inform the selection process.
- (e) ASX will appoint members to the Forum for an initial 2 year term, subject to continued employment with the organisation by whom they were nominated.
- (f) Before the expiry of a member's term, or in the event a member resigns, ASX will consult the user group represented by that retiring member regarding the appointment of a new representative member. It is expected that some members of the Forum will rotate so that the Forum will function as set out in clause 2.3(a).

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<sup>1</sup> **Explanatory Note:** ASX Clear and ASX Settlement recognise that the Forum may comprise members who are competitors or potential competitors of each other and of ASX Clear and ASX Settlement. This provision is designed to remind members of the Forum of their obligations under the *Competition and Consumer Act 2010* (Cth).

- (g) ASX will appoint members to the Forum based on their skills and experience.
- (h) A member of the Forum cannot appoint a delegate or alternate without the prior approval of the Forum Chair.

## 2.4 Operation of the Forum

- (a) The Forum will be chaired by a member of the Boards of ASX Clear and ASX Settlement (**Forum Chair**).
- (b) The Forum will meet 3 times a year.
- (c) The Forum may appoint and convene business and technical committees to examine and provide advice in relation to particular issues as required. Members of the business and technical committees do not need to be members of the Forum. Business and technical committees will report to the Forum.
- (d) ASX will provide facilities and services for the effective administration and functioning of the Forum. The Forum Chair may invite ASX management to attend meetings of the Forum.
- (e) Agendas will be set by the Forum Chair in consultation with Forum members. The Forum Chair will circulate a draft agenda prior to the Forum meeting to provide Forum members with the opportunity to contribute to the agenda setting process.
- (f) Minutes of meetings of the Forum will be kept and approved by the Forum Chair. The Forum Chair will circulate draft meeting minutes following Forum meetings to provide Forum members with the opportunity to comment on the meeting minutes.
- (g) ASX will publish all agendas and minutes of the Forum on the ASX website.
- (h) The Forum Chair will prepare a written report on the key issues discussed and any recommendations made by the Forum for inclusion in the Board papers for the next meetings of the Boards of ASX Clear and ASX Settlement.
- (i) The Forum Chair will circulate a draft of the report to Forum members.
- (j) The Boards of ASX Clear and ASX Settlement will give due consideration to any material matters raised by, or recommendations of, the Forum and liaise with the Forum as appropriate.
- (k) The Forum Chair will report to the next Forum meeting on the outcome of discussions of the Boards of ASX Clear and ASX Settlement relevant to any recommendations made by the Forum. The Forum Chair may also report on other issues of interest to the Forum.
- (l) The Boards of ASX Clear and ASX Settlement will jointly provide a written response to the report prepared by the Forum Chair to be provided to the Forum which articulates:
  - (1) the response to any material matters raised by the Forum;
  - (2) the recommendations that are being followed;
  - (3) the recommendations that are not being followed; and
  - (4) the reasons for these decisions.

## 2.5 Commitment to broad user consultation

- (a) In addition to the Forum, ASX Clear and ASX Settlement will continue to provide other mechanisms for user engagement and consultation.
- (b) Any interested party may provide information to ASX Clear and ASX Settlement in respect of the development of clearing and settlement services and infrastructure at any time (on a collective or confidential basis). This information may be provided by sending a written submission to ASX Clear and ASX Settlement addressed to the attention of the Forum Chair. Relevant contact details will be placed on the ASX website.
- (c) The Forum Chair will consider submissions provided by interested parties when preparing reports to be provided to the Boards of ASX Clear and ASX Settlement.

## 3 Pricing

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*The structure of the ASX group allows for the efficient delivery of services to users. In pricing those services, ASX is committed to the principles of transparency and non-discrimination.*

### 3.1 Transparent pricing

- (a) ASX will publish fee schedules, in a clear and accessible form, for all clearing and settlement services covered by this Code. The published schedules will include a brief description of each service.
- (b) The published fee schedules will include details, including applicable terms, conditions and eligibility criteria, of any rebates, revenue-sharing arrangements and discounts applicable to each service.
- (c) ASX will make available worked examples, tools and other information as appropriate which will assist users to anticipate the price they will have to pay for use of the services. The worked examples, tools and other information will enable users to be able to assess:
  - (1) the expected cost impacts of any pricing changes;
  - (2) the expected cost impacts associated with new products and initiatives; and
  - (3) the impact of discounts, rebates and revenue-sharing arrangements for different user groups and different activity profiles.
- (d) ASX will publish all information on the ASX website.

### 3.2 Published management accounts for cash equities

- (a) ASX will publish management accounts in respect of the clearing and settlement of cash equities in Australia. ASX will publish these accounts on an annual basis, together with ASX's full year financial results, and make them available on the ASX website.

- (b) In the management accounts, ASX will allocate directly attributable and common shared costs for cash equity clearing and settlement as between ASX Clear and ASX Settlement. ASX will allocate costs for the clearing and settlement functions on the following basis:
  - (1) the directly attributable expenditure undertaken in respect of relevant clearing and settlement functions will be the increase in total expenditure which results from that function; and
  - (2) the expenditure on shared assets and indirect costs will be allocated on the basis of identified and appropriate drivers of the expenditure related to the respective clearing and settlement functions.
- (c) ASX will establish a policy which describes the methodology used for apportioning directly attributable and indirect or common shared costs. This policy will be reflected in the published management accounts.
- (d) The published management accounts will be subject to review by an external auditor.

### 3.3 Non-discriminatory and transfer pricing

- (a) Non-discriminatory pricing: ASX is committed to providing non-discriminatory pricing to all customers and potential users. The prices for clearing and settlement services provided by ASX Clear and ASX Settlement, including rebates, revenue-sharing arrangements and discounts applicable to the use of these services, will not discriminate between ASX-affiliated and other customers or potential users of clearing and settlement services.
- (b) Transfer pricing: ASX Clear and ASX Settlement will charge all users, including ASX-affiliated entities, non-discriminatory prices for materially equivalent services.

### 3.4 Pricing comparison

ASX Clear and ASX Settlement will annually benchmark the scope of the clearing and settlement services they provide and the pricing and fees for those services compared to the clearing and settlement services and the pricing and fees for those services provided by facilities in other cash equity markets. ASX Clear and ASX Settlement will provide a report containing the results of this comparison to the Forum and the Agencies and will publish the report on the ASX website.

## 4 Access to clearing and settlement services

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*ASX is committed to providing access to clearing and settlement services on transparent and non-discriminatory terms and to responding to user requests for access in a fair and timely manner.*

### 4.1 Standard access to clearing and settlement services

- (a) ASX Clear and ASX Settlement will continue to publish on the ASX website transparent standard terms and conditions:
  - (1) to become an ASX Clear or ASX Settlement participant pursuant to the ASX Clear and ASX Settlement operating rules;

- (2) for AMOs seeking access to TAS in order to facilitate the clearing and settlement for transactions effected through that AMO pursuant to the TAS Legal Terms; and
  - (3) for ALMOs to apply for the provision of settlement facilitation services, pursuant to the Settlement Facilitation Service Agreement.
- (b) Access to clearing and settlement services will be provided on a non-discriminatory basis. ASX Clear and ASX Settlement will not unreasonably prohibit, condition or limit, directly or indirectly, access by a person or company to clearing and settlement services.

## 4.2 Responsiveness to requests

- (a) ASX Clear and ASX Settlement will consider any request for clearing and settlement services in a timely manner.
- (b) ASX Clear and ASX Settlement will publish protocols on the ASX website which set out target timeframes for responding to requests for services and dispute resolution processes.

## 4.3 Dispute resolution

- (a) Any dispute in relation to an application to become an ASX Clear or ASX Settlement participant, or, in relation to services provided to an ASX Clear or ASX Settlement participant, is governed by the ASX Clear and ASX Settlement operating rules as appropriate.
- (b) Dispute resolution processes will apply to disputes:
  - (1) with AMOs and ALMOs which are seeking standard access to clearing and settlement services as governed by this Code (**pre-access disputes**); and
  - (2) with AMOs and ALMOs which are being provided with the clearing and settlement services governed by this Code (**post-access disputes**).
- (c) The dispute resolution processes applying to pre-access disputes will be incorporated into the protocols described in clause 4.2(b).
- (d) The dispute resolution processes applying to pre-access disputes which will be incorporated into the protocols described in clause 4.2(b) will contain the following features:
  - (1) a procedure for parties to provide a written notice to ASX Clear and ASX Settlement which identifies the nature of the dispute;
  - (2) an obligation on all parties to negotiate in good faith to resolve disputes within a specified timeframe; and
  - (3) a procedure to escalate any disputes which have not been resolved by negotiation to an independent arbitrator for a final binding decision.
- (e) The dispute resolution processes applying to post-access disputes will be incorporated into the TAS Legal Terms and the Settlement Facilitation Service Agreement as appropriate.

## 5 Review

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*ASX commits to undertake regular reviews in respect of the operation of the Code.*

- (a) ASX will conduct internal reviews regarding the operation of the Code, including with respect to:
- (1) the effectiveness of the Forum in meeting the objectives set out in clause 2.2;
  - (2) ASX's compliance with the cost allocation principles described in clause 3.2;
  - (3) ASX's compliance with the access request protocols described in clause 4.2(b) relating to requests for access to clearing and settlement services; and
  - (4) ASX's pricing to verify that there is no discrimination between ASX-affiliated entities and other users of clearing and settlement services.

A written report based on the internal review will be prepared and provided to the Boards of ASX Clear and ASX Settlement and the Forum promptly after the report's completion. ASX will publish the report on the ASX website.

- (b) Additionally, ASX will engage an external auditor to conduct an annual review and prepare a written report regarding the operation of the Code, including with respect to:
- (1) ASX's compliance with the cost allocation principles described in clause 3.2;
  - (2) ASX's compliance with the access request protocols described in clause 4.2(b) relating to requests for access to clearing and settlement services; and
  - (3) ASX's pricing to verify that there is no discrimination between ASX-affiliated entities and other users of clearing and settlement services.

The external auditor's report will be provided to the Boards of ASX Clear and ASX Settlement and the Forum promptly after the report's completion. ASX will publish the report on the ASX website.

- (c) Users of clearing and settlement services will be consulted as part of the reviews.
- (d) ASX Clear and ASX Settlement will provide the Agencies with such information as is reasonably requested by the Agencies to monitor ASX Clear and ASX Settlement's ongoing compliance with the Code.
- (e) ASX will maintain procedures for users to provide any comments or complaints in respect of the operation of this Code. ASX will publish protocols on the ASX website for responding to any comments or complaints.
- (f) Comments or complaints should be addressed to the attention of the office of the Chief Executive Officer.
- (g) If a party is not satisfied with the response from the ASX Chief Executive Officer, the party may ask for the comment or complaint to be directed to the Forum Chair and the Boards of ASX Clear and ASX Settlement for their consideration.

## 6 Protection of confidential information

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*ASX Clear and ASX Settlement will not misuse any confidential information acquired in the course of providing clearing and settlement services.*

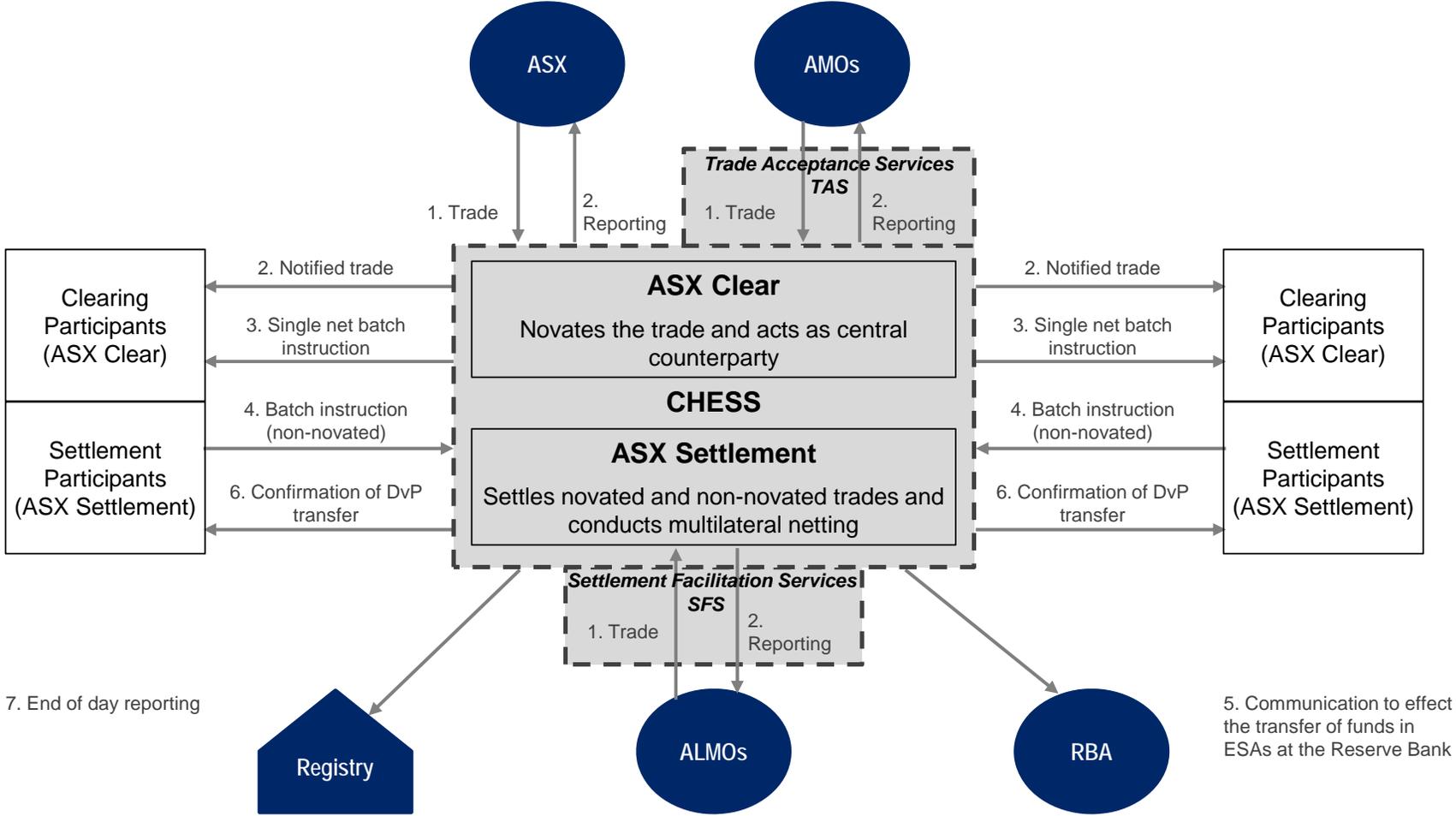
- (a) ASX Clear and ASX Settlement will comply with ASX's published Conflict Handling Arrangements policy. Any confidential or competitively sensitive information that is acquired in the course of providing clearing and settlement services will only be used for the purpose for which it was provided.
- (b) ASX Clear and ASX Settlement will not use any confidential or competitively sensitive information acquired in the course of providing clearing and settlement services to provide an advantage to an affiliated entity of ASX Clear or ASX Settlement.

## 7 Operation of Code

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- (a) This Code commences operation on 9 August 2013.
- (b) Changes to the Code will not be made without prior consultation with the Forum, other users and the Agencies.
- (c) This Code will be interpreted consistently with:
  - (1) ASX Clear and ASX Settlement's license obligations under the Corporations Act;
  - (2) ASX's legal or regulatory obligations;
  - (3) the ASX Clear and ASX Settlement operating rules; or
  - (4) any agreements entered into between ASX, and customers and other stakeholders.

# Appendix A: Cash Market Trade to Settlement Flow



## Glossary

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The meanings of the terms used in this Code are set out below.

<b>Term</b>	<b>Meaning</b>
<b>ACCC</b>	Australian Competition and Consumer Commission.
<b>Agencies</b>	ACCC, ASIC, RBA and Treasury.
<b>ALMO</b>	approved listing market operator.
<b>AMO</b>	approved market operator.
<b>ASIC</b>	Australian Securities and Investments Commission.
<b>ASX</b>	ASX Limited (ACN 008 624 691) and as the context requires the ASX group of companies including ASX Clear and ASX Settlement.
<b>ASX Clear</b>	ASX Clear Pty Limited (ACN 001 314 503).
<b>ASX Settlement</b>	ASX Settlement Pty Limited (ACN 008 504 532).
<b>CHESS</b>	the Clearing House Electronic Subregister System.
<b>Conflict Handling Arrangements policy</b>	the policies published on the ASX website for the management of potential conflicts of interest, as amended from time to time.
<b>Corporations Act</b>	the <i>Corporations Act 2001</i> (Cth).
<b>Customer Charter</b>	the customer charter published by ASX in 2012.
<b>Forum</b>	the advisory forum on clearing and settlement for the Australian cash equity market established by this Code.

<b>Term</b>	<b>Meaning</b>
<b>Forum Chair</b>	has the meaning given in clause 2.4(a).
<b>OTC</b>	over the counter.
<b>RBA</b>	Reserve Bank of Australia.
<b>Settlement facilitation service</b>	<p>settlement arrangements provided to approved listing venues other than ASX (ALMOSs) in respect of CHESS-eligible financial products listed on the markets of those ALMOs.</p> <p>These arrangements consist of a transfer facilitation service and a delivery versus payment facilitation service (see <a href="http://www.asx.com.au/settlement/settlement-arrangements-for-approved-market-operators.htm">http://www.asx.com.au/settlement/settlement-arrangements-for-approved-market-operators.htm</a>).</p>
<b>Settlement Facilitation Service Agreement</b>	the agreement entered into between ASX Settlement and a listing market operator in respect of the provision of settlement facilitation services as amended from time to time.
<b>TAS</b>	<p>trade acceptance service.</p> <p>This service was developed by ASX to enable trading venues that competed with ASX's trading business to have a standard access service for clearing and settlement (see <a href="http://www.asx.com.au/clearing/trade-acceptance-service.htm">http://www.asx.com.au/clearing/trade-acceptance-service.htm</a>).</p>
<b>TAS Legal Terms</b>	the legal terms for the provision of a trade acceptance service to Australian financial market licensees in respect of CHESS-eligible ASX-quoted financial products dated 14 June 2011 as amended from time to time.