

Invitation to comment

ASX is seeking submissions on this consultation paper by Friday, 27 February 2015. Submissions should be sent to:

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Attention: Ms Diane Lewis, Senior Manager,
Regulatory & Public Policy

ASX prefers to receive submissions in electronic form. Submissions not marked as 'confidential' will be made publicly available on ASX's website.

If you would like your submission, or any part of it, to be treated as 'confidential', please indicate this clearly in your submission. ASX is available to meet with interested parties for bilateral discussions on the matters canvassed in this consultation paper.

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Executive Summary

1. The purpose of this consultation paper is to seek comment on proposed operational improvements to the Code of Practice for Clearing and Settlement of Cash Equities in Australia (the Code) by 27 February 2015. ASX is consulting on the proposed amendments to the Code ahead of any review of the market structure for cash market clearing by regulators and Government.
2. The Council of Financial Regulators (CFR) is expected to review the operation of the Code and the market structure for cash market clearing, and provide advice to the Government in the first quarter of 2015. If the Government makes a decision to introduce competition in cash market clearing, ASX will again review the Code and consider whether ASX's commitments and these operational processes continue to be appropriate.
3. The Code provides a framework for transparent and non-discriminatory pricing and access for ASX's cash market clearing and settlement services. It also provides for an ongoing process for formal engagement with a broad set of users on the development of these services. The Code reinforces ASX's commitment to ensuring Australia's clearing and settlement infrastructure is world class, efficient, well capitalised, well regulated, and continues to meet users' needs.
4. Since the Code came into effect on 9 August 2013, it has delivered a number of tangible outcomes for the industry, including:
 - A commitment to introduce a T+2 settlement cycle for the cash market in the first quarter of calendar year 2016.
 - A commitment to introduce global messaging standards with the replacement of CHES.
 - New quarterly fee and activity level reporting for cash market clearing and settlement participants.
 - Waiving the annual fee for the Trade Acceptance Service (TAS) from the commencement of the Code for so long as the current market structure and the Code remain in place.
 - Introduction of tiered capital requirements for general clearing participants.
 - Improved transparency with the publication of cash market clearing and settlement management accounts.
 - Improved transparency of the operational performance of cash market clearing and settlement services.
5. Without making any assumptions about what the Government may decide or whether the Code may continue, ASX has identified a small number of operational improvements to increase the effectiveness and efficiency of the Code following its first year of operation. The operational improvements relate to the frequency of meetings of the advisory mechanisms established by ASX under the Code (the Forum and the Business Committee), and measures to simplify the administration of the Code.
6. Irrespective of the outcomes from the CFR review and Government decision on cash market clearing, ASX plans to continue to engage with the industry through mechanisms like the Forum, Business Committee and the Technical Committee given how effective they have been in providing input to ASX on cash market clearing and settlement services and in obtaining industry agreement to implement a T+2 settlement cycle. These forums will also be integral in progressing the project to replace CHES over the next three years.

Background on the Code

7. The Code has been in effect since 9 August 2013. ASX developed the Code following an announcement by the Deputy Prime Minister and Treasurer in the former Government on 11 February 2013, to defer a decision on any licence application from a central counterparty seeking to offer cash market clearing services in Australia for a period of two years.
8. In making this decision, the former Deputy Prime Minister and Treasurer accepted in full the recommendations of CFR in relation to competition in Australian cash market clearing. CFR's advice was based on work carried out by the Reserve Bank of Australia, the Australian Treasury, and the Australian Securities and Investments Commission in collaboration with the Australian Competition and Consumer Commission, and followed consultation on a CFR paper 'Competition in the Clearing and Settlement of the Australian Cash Equity Market', issued in June 2012.
9. The feedback received by CFR through its 2012 consultation process was that while there were a number of stakeholders in favour of competition in cash market clearing, in-principle, there was a general concern about the significant costs that would likely be imposed on industry as a result of the introduction of competition. There was also a concern that the benefits that may be expected from the introduction of competition may not outweigh the associated costs.
10. ASX developed the Code following a comprehensive industry consultation process involving a public call for submissions on a draft of the Code and consultation meetings with a wide range of industry stakeholders.
11. The Code reinforces ASX's commitment to ensuring Australia's clearing and settlement infrastructure is world class, efficient, well capitalised, well regulated, and continues to meet users' needs. The Code sets out ASX's commitments in three key areas:
 - The establishment of an advisory forum (the Forum) to provide the Boards of ASX Clear and ASX Settlement with user input on the ongoing development of cash market clearing and settlement infrastructure and services.
 - Transparent and non-discriminatory pricing of cash equities clearing and settlement services.
 - Transparent and non-discriminatory terms of access to cash equities clearing and settlement services.
12. The arrangements put in place under the Code only apply to the Australian cash market and do not apply to clearing and settlement services supporting either exchange-traded or OTC derivative markets or OTC debt markets.

Tangible Outcomes Delivered under the Code

13. The current ASX operating model provides for significant operational efficiencies in the delivery of cash market clearing and settlement services and the Code provides a mechanism to obtain user input on the ongoing development of cash market clearing and settlement infrastructure and services. Since the Code has been in place, ASX has worked with customers and other industry stakeholders through the advisory forums established under the Code with a view to investing in infrastructure and service innovation, delivering capital efficiencies for participants and responding to customer requests.
14. Investment in infrastructure and service innovation will be delivered under the Code through the introduction of a T+2 settlement cycle for the cash market in the first quarter of 2016 and the introduction of the ISO 20022 messaging standard with the replacement of CHES. The Boards of ASX Clear and ASX Settlement have adopted the Forum's recommendation that a T+2 settlement cycle be implemented. At the request of customers, ASX will also change the timing of the daily batch settlement cut-off from 10.30am to 11.30am to support the shorter settlement cycle and help ensure market efficiency is maintained. ASX worked closely with the Business Committee and payment providers to achieve an industry supported outcome on the batch settlement cut-off time.
15. Flexible participant structures and capital efficiencies have been delivered under the Code through the following initiatives:
 - The introduction of tiered minimum core capital requirements for general clearing participants, which has provided for the release of \$55 million in capital for five existing customers. Two new market entrants are also expected as a result of these changes.
 - Facilitated clearing by clearing participants through multiple PIDS (participant identification numbers). This initiative has supported business transformation by customers and has provided for a consolidation of liquid capital requirements and cash market margins for those customers.
 - Facilitated Authorised Deposit-Taking Institutions (ADIs) to become clearing participants by waiving ASX Clear capital requirements and relying on capital held under prudential regulatory requirements. This initiative has delivered significant capital savings for an existing customer.
16. In response to feedback from the Business Committee, ASX has delivered new quarterly activity level and fee reports for individual cash market clearing and settlement participants setting out the following information:
 - Individual metrics per PID.
 - Comparison between the participant and an anonymous peer group (providing a market ranking).
 - Greater granularity of information relating to trading, clearing and settlement by volumes/value and fees.
 - Failure rates and related fee reporting.
 - Clearing benefit for the participant by value and volume.
17. The Code has also delivered a number of other outcomes relating to improved transparency and access related to ASX's cash market clearing and settlement services, which are discussed in the following three sections of this paper.

User input into governance

18. Under the Code, ASX has established three advisory forums – the Forum, a Business Committee and a Technical Committee – to provide input to ASX on the ongoing development of cash market clearing and settlement infrastructure and services.
19. The Forum comprises 22 senior representatives from clearing and settlement participants, a mid-tier broker, a third party clearer, ASX and another market operator, and a wide range of other industry stakeholders including custodial service providers, the superannuation industry, the funds management industry, listed companies, share registries and system vendors. The Forum provides user input to the Boards of ASX Clear and ASX Settlement and provides a formal mechanism for the Boards of ASX Clear and ASX Settlement to report to users on their strategic plans and decisions in relation to the design, operation and development of the core clearing and settlement infrastructure for the Australian cash market, including CHES. Since its establishment, the Forum has met four times.
20. Members of the Forum were appointed for a two year term commencing on 9 August 2013. At the time of commencement of the Code and the establishment of the Forum, ASX indicated that some Forum Members would rotate following the completion of the first two year term. The objective is to provide for both some continuity of membership and participation by other customers and stakeholders to help ensure that the Forum can function as an effective process for providing user input to the Boards of ASX Clear and ASX Settlement. ASX will consult Forum Members on membership in the second quarter of calendar year 2015. A list of current Forum Members is provided in Appendix 1.
21. ASX has established a Business Committee to support the Forum. The Business Committee provides business and operational input on the forward work program to the Forum. The forward work program was developed with input from Business Committee Members and it was endorsed by the Forum. The forward work program has been developed around four major themes: capital efficiency and industry economics; participant structure flexibility and efficiency; service innovation; and technology and infrastructure enhancements. The Business Committee comprises executives with a deep understanding of clearing and settlement from clearing and settlement participants and market operators other than ASX. The Business Committee has met six times.
22. ASX has also established a Technical Committee to provide input on the replacement of CHES and the introduction of ISO 20022 messaging. The Technical Committee comprises technology executives from clearing and settlement participants, market operators and share registries. The Technical Committee currently reports to the Forum. The Technical Committee has met three times. The frequency of Technical Committee meetings is expected to increase following the commencement of the project to replace CHES.

Transparent and non-discriminatory pricing

23. The Code has delivered improved pricing transparency for cash market clearing and settlement services with the publication of:
 - Cash market clearing and settlement management accounts, together with an independent auditor's report, for FY13 and FY14. The cash market clearing management income statement for FY14 reflects a profit after tax of \$26.0 million, an economic profit after capital charge of \$3.7 million and a return of equity of 11.7%. The cash market settlement management income statement for FY 14 reflects a profit after tax of \$23.8 million, an economic profit after capital charge of \$9.6 million and a return on equity of 17.5%.
 - An ASX internal cost allocation and transfer pricing policy for cash market clearing and settlement services.

- *Global Cost Benchmarking of Cash Equity Clearing and Settlement Services Report* prepared by the independent European consulting firm Oxera Consulting (Oxera) and publicly released in June 2014, which concluded that 'the costs of post-trading services in Australia are in line with the costs of similar services provided in financial centres of a comparable size'.
 - Additional pricing information on the ASX website, including clear and accessible fee schedules with service descriptions, worked examples of headline fees for common transactions, and the terms, conditions and eligibility criteria applicable to the revenue sharing arrangements that are in place.
24. Comprehensive international cost benchmarking has been undertaken on ASX's cash market clearing and settlement services with the publication of the Oxera Report in June 2014 and the publication by Market Structure Partners (MSP) of *International Transaction Cost Benchmarking Review* in October 2014. The findings of the two reports were largely consistent in benchmarking cash market clearing costs where the same markets were covered. The MSP analysis is more narrowly focused on European markets and excludes markets in the Asian region. The other key differences between the reports is that the MSP report does not account for the cost of capital for the purpose of financing the default fund, it does not take appropriate account of scale impacts and it excludes some settlement costs (custody costs) in other markets.

Transparent and non-discriminatory access

25. The Code has delivered transparency of the operational performance of cash market clearing and settlement services, and improved access arrangements for other market execution and listing venues using the Trade Acceptance Service (TAS) and the Settlement Facilitation Service (SFS) with the introduction of the following:
- The publication of quarterly operational performance reports for cash market clearing and settlement services, which includes information in relation to system availability (CHES and the TAS), netting efficiency, settlement efficiency, number of trades rejected, daily average traded and cleared value, the percentage of transactions novated and the daily average settled value (including non-novated transactions). The average monthly system availability for both CHES and the TAS was 100% for the September 2014 quarter. The average monthly system availability for both CHES and the TAS between November 2011 (the TAS commenced operation in November 2011) and September 2014 was 99.99%.
 - The publication of protocols and procedures for responding to requests for access to cash market clearing and settlement arrangements (both requests for standard access and requests for an enhancement or expansion of the services) by other market execution and listing venues. The protocols and procedures set out information on the application process, fees, legal terms, timeframes for responding to requests and considering applications, dispute resolution processes and information handling standards implemented by ASX.
 - Amended legal terms for the TAS implementing a waiver of the \$275,000 annual service fee for the TAS from the commencement of the Code for so long as the current market structure and the Code remain in place. The \$275,000 annual service fee was charged for the cost recovery for the development of the TAS for a five year period.
 - Enhanced service level agreements and operational and technical standards for the TAS and the SFS following a consultation with other market execution and listing venues in late 2013 and the first half of 2014.

- Enhanced information handling standards for the protection of confidential information received in connection with the provision of the TAS and SFS, which:
 - Apply at a board governance level and also a management level. For example, a quorum of the ASX Clear and ASX Settlement Boards can be formed by non-ASX Limited directors.
 - Are subject to an assurance program.
 - Include appropriate restrictions on the dissemination of confidential and conflict sensitive information that is consistent with the principle of information only being disseminated on a ‘needs to know’ basis.
 - Provide for the General Manager of Regulatory Assurance being the single point of contact for the provision of conflict sensitive information provided by other market execution and listing venues.
 - Require that conflict sensitive information only be provided to nominated persons consented to by the relevant market execution and/or listing venue.
 - Provide for the communication of conflict sensitive information with nominated persons using an encrypted email service, and the storage of such information using secure documentation storage.
- Three minor modifications to the TAS were made in the November 2014 CHES release to ensure equivalent validation conditions to those for the ASX market. A technical review of the TAS was undertaken to confirm that the verification services performed by the TAS for trades received from other market execution venues are technically equivalent to the verification services performed by CORE for trades executed on the ASX market. The review found no material differences in the field specifications and validation conditions between the TAS and CORE.

External review of the Code

26. In accordance with the commitments in the Code, internal and external reviews of the operation of the Code were undertaken for the period 9 August 2013 to 30 June 2014. ASX engaged PwC as the independent external auditor to review the operation of the Code.
27. The internal and external reviews of the Code found that ASX was in broad compliance with the obligations included in the Code, and have not identified any areas of significant non-compliance. The reviews have identified three administrative areas where exceptions to the requirements of the Code were noted. None of these are considered significant by the external auditor. The three exceptions relate to:
 - The ASX CEO chaired the first Forum meeting. The Code requires the Chair of the Forum to be a Non-Executive Director.
 - The Forum agenda for the first Forum meeting was published 6 days in advance of the meeting. The Code requires that the agenda be published one week prior to the relevant Forum meeting.
 - The contact email address for the Forum Chair was incorrectly displayed on the website due to a typographical error.
28. The reports from both the [internal](#) and [external](#) reviews were published on the ASX website on 21 August 2014.

Proposed Operational Improvements to the Code

29. Following the first year of operation, a small number of operational and administrative improvements to the Code have been identified. ASX is proposing to improve the processes under the Code as follows:

- Moving from a minimum of three Forum meetings per year to bi-annual Forum meetings. After a year of operation of the Forum, ASX proposes that the Forum should meet twice a year rather than the current arrangement of three meetings a year to ensure that meetings remain relevant and engaging for Members. ASX considers that the types of issues that should be taken to the Forum for discussion can be accommodated in two meetings per year.
- Moving from three Business Committee meetings per year to quarterly meetings. Given the effectiveness of the Business Committee in providing input to progress initiatives and the level of engagement of Business Committee members over the past 12 months, ASX considers that there is merit in moving to quarterly meetings to support the Forum.
- Changing the governance requirements such that Technical Committees established under the Code report to the Business Committee rather than the Forum. ASX considers that it is more appropriate for the Technical Committee to report to the Business Committee given the detailed and technical nature of the advice likely to be provided by the Technical Committee.
- Changing the definition of 'Agencies' so that it refers to the CFR. This 'future proofs' the drafting for any changes in membership of the CFR. As a practical matter, the RBA as the Secretariat for CFR is ASX's liaison point for engagement on the Code.
- Changing the requirement for ASX Clear and ASX Settlement to annually commission independent international cost benchmarking to a requirement that ASX Clear and ASX Settlement commissions updated international cost benchmarking from an independent consulting firm every two years. The basis for this is that the Oxera international benchmarking was a significant piece of work, there is other recent benchmarking information available with the release of the October 2014 MSP benchmarking report and minimal new information is expected from repeating this analysis every year.
- A new requirement is proposed for ASX Clear and ASX Settlement to report to the Forum each year that an updated benchmarking report is not produced on any material changes to ASX Clear and ASX Settlement's tariff structures and fee levels, and the impact of those changes on users.
- Remove the requirement for an annual internal review regarding the operation of the Code on the basis that there is a requirement for an annual review by an independent external auditor.
- Direct the external review of the operation of the Code to the core provisions and commitments:
 - ASX's compliance with the operation of the Forum described in clause 2.4.
 - ASX's compliance with transparent and non-discriminatory pricing of clearing and settlement service described in clauses 3.1 to .34, including ASX's compliance with the cost allocation principles described in clause 3.2.
 - ASX's compliance with transparent and non-discriminatory access to clearing and settlement services described in clauses 4.1 to 4.4.
 - ASX's compliance with the operational standards described in clause 6(c) relating to the protection of competitively sensitive information acquired by ASX Clear and ASX Settlement in the course of providing the TAS and the settlement facilitation service.

- change the requirement for 'users of clearing and settlement services' to be consulted as part of the annual external review to Forum and Business Committee Members being consulted as part of the external review by the auditor.
30. The proposed amendments to the Code are marked-up in Appendix 2.
31. ASX invites feedback on the proposed operational improvements to the Code. For your convenience, this feedback may be provided by completing Appendix 3.

Appendix 1 – Forum Members

Company	Name	Job Title
Users of clearing and settlement services		
Chi-X Australia	Mr John Fildes	Chief Executive Officer
Citi Australia	Mr Stephen Roberts	Chief Executive Officer, Chief Country Officer
CommSec representing Commonwealth Bank of Australia	Mr Paul Rayson ¹	Managing Director, CommSec
Deutsche Bank AG	Mr James McMurdo ²	Chief Executive Officer
HSBC Bank Australia	Mr Tony Cripps	Chief Executive Officer
J.P. Morgan	Mr Robert Priestley	Chief Executive Officer, ASEAN and Australia and New Zealand
Macquarie Securities Group	Mr Stevan Vrcelj	Group Head
Morgan Stanley Australia	Mr Steve Harker	Managing Director and Chief Executive Officer
Patersons Securities	Mr Michael Manford	Executive Chairman and CEO
Pershing Securities	Mr Craig Mason	Chief Executive Officer
UBS Australia	Mr Matthew Grounds	Chief Executive Officer
Industry stakeholders		
Australian Financial Markets Association	Mr David Lynch	Chief Executive Officer
Stockbrokers Association of Australia	Mr David Horsfield	Managing Director and CEO
Financial Services Council representing the funds management industry	Mr Greg Cooper ³	Chairman, FSC
Link Market Services representing share registries	Mr David Geddes ⁴	Chief Executive Officer, Link Market Services and Link Super
GBST representing system vendors	Mr Stephen Lake	Managing Director and Chief Executive Officer
Australian Custodial Services Association (ACSA) representing custodial services providers	Mr Martin Carpenter ⁵	ACSA Director and Executive Sponsor for the Custody Operations Working Group
Australian Payments Clearing Association (APCA)	Mr Chris Hamilton	Chief Executive Officer
Group of 100 (G100) representing listed companies	Mr Terry Bowen	Executive Member
Association of Superannuation Funds of Australia (ASFA) representing the superannuation industry	Ms Pauline Vamos ⁶	Chief Executive Officer
ASX		
ASX Clear and ASX Settlement Boards	Mr Ian McGaw	Chairman of ASX Clear and ASX Settlement Boards
ASX Limited, ASX Clear and ASX Settlement Boards	Dr Ken Henry AC	Forum Chair and Director of ASX Limited, ASX Clear and ASX Settlement Boards

¹ CommSec was represented in the Forum by Mr Stephen Karpin, the former Executive General Manager, Equities and Margin Lending, Commonwealth Bank of Australia, at the first meeting of the Forum on 2 October 2013.

² Deutsche Bank AG was represented in the Forum by Mr John Macfarlane, the former Executive Chairman, at the first meeting of the Forum on 2 October 2013.

³ The Financial Services Council (FSC) was represented by Mr Brett Jollie, Director of FSC Board and Co-Chair of FSC Investment Board Committee, as a delegate for Mr Greg Cooper at the second meeting of the Forum on 2 April 2014.

⁴ Link Market Services and Link Super was represented by Mr Phillip Muhlbauer, the former Chief Executive Officer, at the second and third meetings of the Forum on 2 April 2014 and 23 June 2014.

⁵ The Australian Custodial Services Association (ACSA) was represented by Mr Pierre Jond, the former Chair of ACSA, as a delegate for Mr Martin Carpenter at the first meeting of the Forum on 1 October 2013.

⁶ The Association of Superannuation Funds of Australia (ASFA) was represented by Mr Gordon Noble, the former Director Investments and Economy, at the first three meetings of the Forum on 1 October 2013, 2 April 2014 and 23 June 2014.

Appendix 2 – Proposed Code Amendments

9 August 2013

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

ASX Limited

ASX Clear Pty Limited

ASX Settlement Pty Limited

1 ASX's commitment

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 has been developed following 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

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 plans 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 CHESSE.
- (b) Members of the Forum will not consider or discuss any competitively sensitive information in contravention of the *Competition and Consumer Act 2010* (Cth).¹

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 the superannuation industry;
 - (11) a member representing listed companies;
 - (12) a non-executive member of the Boards of ASX Clear and ASX Settlement (Forum Chair); and
 - (13) 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 users 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).
- (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.

¹ **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).

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 at least ~~twice~~³ times a year.
- (c) The Forum will appoint and convene a business committee to provide business and operational input on the forward work program of the Forum. Forum members, ASX Clear and ASX Settlement will nominate members of the business committee. Members of the business committee do not need to be members of the Forum. The business committee will report to the Forum. ~~The Business committee will meet quarterly. Ings will be held ahead of meetings of the Forum.~~
- (d) The Forum may appoint and convene technical committees to examine and provide advice in relation to particular issues as required. Members of the technical committees do not need to be members of the Forum. Technical committees will report to the ~~Business Committee~~^{Forum}.
- (e) 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.
- (f) 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.
- (g) 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.
- (h) ASX will publish all agendas and minutes of the Forum on the ASX website. Agendas will be published 1 week prior to the relevant Forum meeting and minutes of the Forum will be published as soon as practicable after they have been provided to the Boards of ASX Clear and ASX Settlement.
- (i) 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. These reports will be published on the ASX website as soon as practicable after they have been provided to the Boards of ASX Clear and ASX Settlement.
- (j) The Forum Chair will circulate a draft of the report to Forum members.
- (k) 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.
- (l) 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.
- (m) 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.

Written responses from ASX Clear and ASX Settlement to the Forum will be published on the ASX website as soon as practicable after they have been provided to the Forum.

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

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

- (a) On 23 June 2014, ASX released the Oxera Global Cost Benchmarking of Cash Equity Clearing and Settlement Services Report (the Oxera Report). The Oxera Report provided an international cost comparison of cash market clearing and settlement services. Every two years from the release of the Oxera Report, ASX Clear and ASX Settlement will annually commission an updated benchmarking report from an independent consulting firm, benchmarking of the scope of the clearing and settlement services that ASX Clear and ASX Settlement 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.
- ~~(b) Subject to clause 3.4(a), ASX Clear and ASX Settlement will consult the Forum on the scope and methodology of the international price benchmarking prior to it being commissioned in accordance with clause 3.4(a).~~
- (b) ASX Clear and ASX Settlement will commission and produce the updated benchmarking report and provide a report containing the results of this comparison to the Forum and the Agencies, and will publish the report on the ASX website.
- (c) In each year that an updated benchmarking report is not produced, ASX Clear and ASX Settlement will report to the Forum on any material changes to their tariff structures or fee levels, and the impact of those changes on users.

4 Access to clearing and settlement services

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 Service level agreements

- (a) ASX Clear and ASX Settlement will consult AMOs and ALMOs on their respective service level agreements under the TAS and the Settlement Facilitation Service with the objective of making those service level agreements consistent with the outcomes of a competitive market and ASX Clear and ASX Settlement's licence obligations.

4.3 Responsiveness to requests

- (a) ASX Clear and ASX Settlement will consider any request for clearing and settlement services by AMOs and ALMOs, including requests for changes to clearing and settlement services, in a timely manner.
- (b) Where a request for change to clearing and/or settlement services under the TAS or Settlement Facilitation Service by an AMO or ALMO has been agreed by ASX Clear and/or ASX Settlement, ASX Clear and/or ASX Settlement will advise the requesting customer in writing the scope of any technical development required and any changes to ASX operating rules and procedures, together with the priority, indicative timeline and cost of implementing the change.
- (c) 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 for AMOs and ALMOs.

4.4 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 **4.3(c)**
- (d) The dispute resolution processes applying to pre-access disputes which will be incorporated into the protocols described in clause **4.3(c)** 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

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

- ~~(a) ASX will conduct an annual internal review 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 4.3(c) relating to requests for access to clearing and settlement services;~~
 - ~~(4) ASX's compliance with the operational standards described in clause 6(c) relating to the protection of competitively sensitive information acquired by ASX Clear and ASX Settlement in the course of providing the TAS and the settlement facilitation service; and~~
 - ~~(5) ASX's pricing to verify that there is no discrimination between ASX-affiliated entities and other users of clearing and settlement services.~~~~

~~The internal review will be completed and a written report based on the internal review will be published within 3 months following the end of each financial year. The 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.~~

- ~~(b)(a)~~ ~~Additionally~~, ASX will engage an independent 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 operation of the Forum described in clause 2.4;
 - ~~(1)(2)~~ ASX's compliance with transparent and non-discriminatory pricing of clearing and settlement services described in clauses 3.1 to 3.4, including ASX's compliance with the cost allocation principles described in clause 3.2;
 - ~~(2)(3)~~ ASX's compliance with transparent and non-discriminatory access to clearing and settlement services described in clauses 4.1 to 4.4; and ASX's compliance with the access request protocols described in clause 4.3(c) relating to requests for access to clearing and settlement services;
 - ~~(3)~~ ASX's compliance with the operational standards described in clause 6(c) relating to the protection of competitively sensitive information acquired by ASX Clear and ASX Settlement in the course of providing the TAS and the settlement facilitation service; ~~and~~
 - ~~(4)~~ ASX's pricing to verify that there is no discrimination between ASX-affiliated entities and other users of clearing and settlement services.

The external review will be completed and the external auditor's report will be published within 3 months following the end of each financial year. 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.

- ~~(e)(b)~~ Members of the Forum and Business Committee ~~Users of clearing and settlement services~~ will be consulted as part of the reviews.
- ~~(d)(c)~~ 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)(d)~~ 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)(e)~~ Comments or complaints should be addressed to the attention of the office of the Chief Executive Officer.
- ~~(g)(f)~~ 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

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

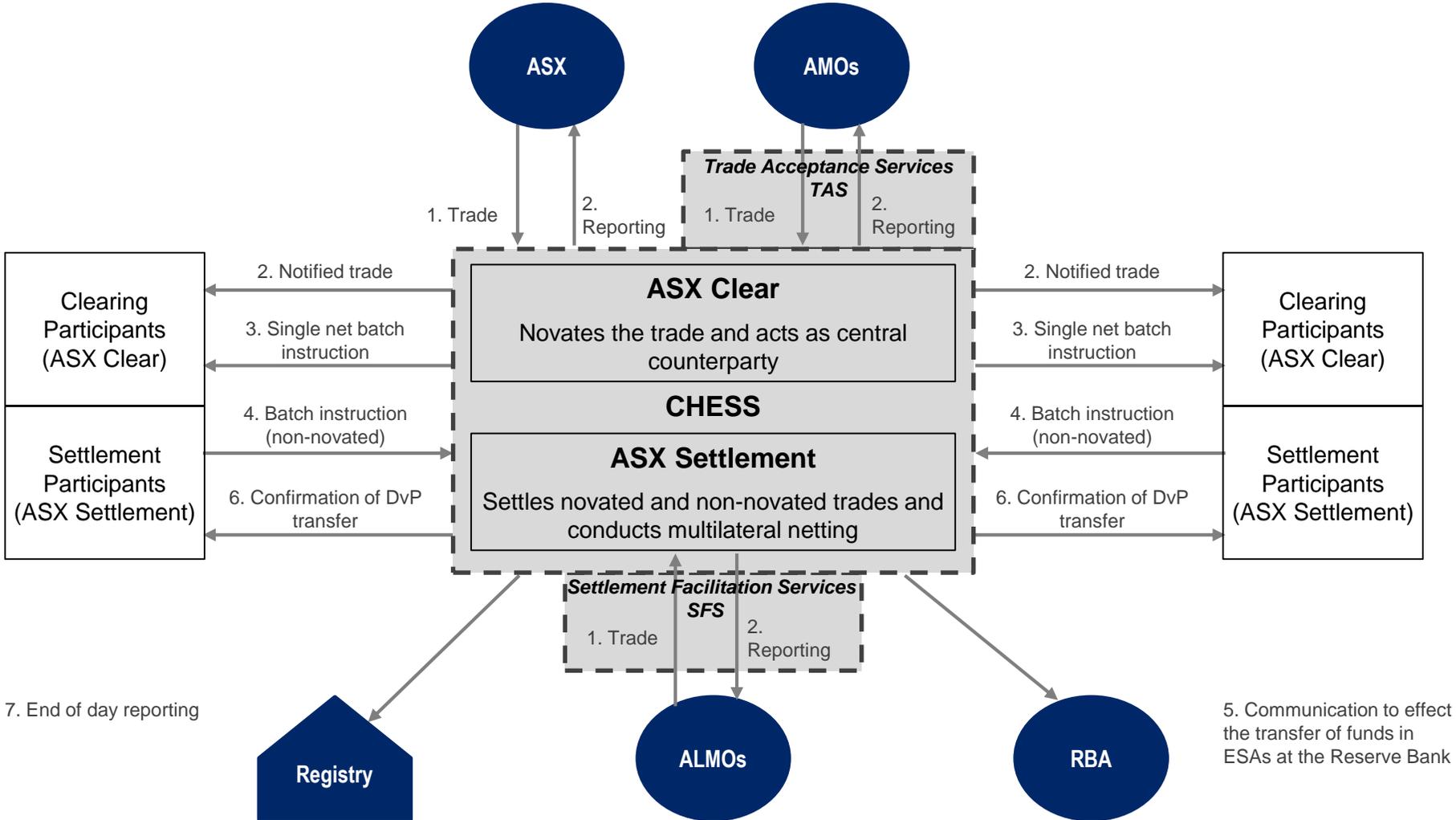
- (a) ASX Clear and ASX Settlement will comply with ASX's published Conflict Handling Arrangements policy. Any confidential or competitively sensitive information that is acquired in the course of providing clearing and settlement services will only be used for the purpose for which it was provided.
- (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.

- (c) ASX Clear and ASX Settlement will put in place operational standards for the protection of AMO and ALMO competitively sensitive information acquired by ASX Clear and ASX Settlement in the course of providing the TAS or the Settlement Facilitation Service. ASX will consult with AMOs and ALMOs on the development of Information Handling Standards to implement information barriers within ASX to safeguard AMO and ALMO competitively sensitive information.

7 Operation of Code

- (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

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

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

Term	Meaning
Forum Chair	has the meaning given in clause 2.4(a).
OTC	over the counter.
RBA	Reserve Bank of Australia.
Settlement facilitation service	<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 ALMOSs.</p> <p>These arrangements consist of a transfer facilitation service and a delivery versus payment facilitation service (see http://www.asx.com.au/settlement/settlement-arrangements-for-approved-market-operators.htm).</p>
Settlement Facilitation Service Agreement	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.
TAS	<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 http://www.asx.com.au/clearing/trade-acceptance-service.htm).</p>
TAS Legal Terms	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.

Appendix 3 – Invitation for Feedback

ASX invites you to provide feedback on the proposed operational improvements to the Code set out below.

Consultation question
1. Moving from three Forum meetings per year to bi-annual Forum meetings.
Your feedback:
2. Moving from three Business Committee meetings per year to quarterly Business Committee meetings.
Your feedback:
3. Changing the governance requirements such that Technical Committees established under the Code report to the Business Committee rather than the Forum.
Your feedback:
4. Changing the definition of 'Agencies' so that it refers to the Council of Financial Regulators (CFR).
Your feedback:
5. Changing the requirement for ASX Clear and ASX Settlement to annually commission independent international cost benchmarking to a requirement that they commission updated international cost benchmarking from an independent consulting firm every two years.
Your feedback:

6. A new requirement for ASX Clear and ASX Settlement to report to the Forum each year that an updated international cost benchmarking report is not produced on any material changes to ASX Clear and ASX Settlement's tariffs structure and fee levels, and the impact of those changes for users.

Your feedback:

7. Remove the requirement for an annual review regarding the operation of the Code.

Your feedback:

8. Direct the external review of the operation of the Code to the core provisions and commitments relating to ASX's compliance with: the operation of the Forum (clause 2.4); transparent and non-discriminatory pricing (clauses 3.1 to 3.4); transparent and non-discriminatory access (clauses 4.1 to 4.4); and the protection of competitively sensitive information (clause 6(c)).

Your feedback:

9. Change the requirement for 'users of clearing and settlement services' to be consulted as part of the annual external review to Forum and Business Committee Members being consulted as part of that review.

Your feedback: