

CLEARING AND SETTLEMENT SERVICES FOR APPROVED MARKET OPERATORS AND APPROVED LISTING MARKET OPERATORS: ENHANCED SERVICE LEVELS AND INFORMATION HANDLING STANDARDS

ASX committed in the Code of Practice for Clearing and Settlement of Cash Equities in Australia (Code of Practice) to consult Approved Market Operators (AMOs) and Approved Listing Market Operators (ALMOs) on the service level agreements and the information handling standards put in place under the Trade Acceptance Service and the Settlement Facilitation Service. In accordance with this commitment, ASX issued a public consultation paper [Clearing and Settlement Services for Approved Market Operators and Approved Listing Market Operators: enhanced service levels and information handling standards](#) on 23 January 2014.

In response to the consultation paper, ASX received written submissions from Chi-X Australia (Chi-X) and Asia Pacific Stock Exchange (APX).

ASX proposes to amend the Legal Terms of the Trade Acceptance Service, the associated Operational and Technical Standards and the Information Handling Standard to:

- Waive the annual service fee for the Trade Acceptance Service effective from the introduction of the Code of Practice on 9 August 2013.
- Enhance ASX Clear and ASX Settlement's service level commitments to users of the Trade Acceptance Service by providing minimum notice periods for communicating the details of technical enhancements and operational changes.
- Enhance and streamline the Operational and Technical Standards by removing five standards and amending a further two standards to maintain equivalence with corresponding requirements applicable to the ASX and ASX participants.
- Enhance the Information Handling Standard by restricting the disclosure of AMO conflict sensitive information to any directors of ASX Clear, ASX Settlement or ASX Compliance who are also ASX directors.

In response to consultation feedback, ASX has amended the proposals relating to the Trade Acceptance Service set out in the Consultation Paper to:

- Waive the annual service fee for the Trade Acceptance Service from 9 August 2013 instead of 1 July 2014. A waiver of the annual service fee from 9 August 2013 will involve ASX reimbursing Chi-X for fees paid since 9 August 2013.
- Increase the minimum notice period from 3 months to 4 months for a TAS Application functional upgrade requiring an external CHES release.
- Increase the minimum notice period from 1 month to 2 months for a TAS Application non-functional enhancement requiring an internal CHES release.
- Include an explicit reference to the principle of confidential information only being disseminated on a 'needs to know' basis in the Information Handling Standard.

Through this process, ASX has also formalised its current arrangements for the protection of confidential information received from an ALMO by putting in place an Information Handling Procedure for the Settlement Facilitation Service. In response to consultation feedback, ASX has amended the proposed Information Handling Procedure to include an explicit reference to the principle of confidential information only being disseminated on a 'needs to know' basis.

Separately, ASX engaged bilaterally with ALMOs on proposals to enhance the service level and other operational procedures applicable to its Settlement Facilitation Service. The revised [Operational Procedures for Approved Listing Market Operators using ASX Settlement Services](#) was finalised with input from ALMOs on 14 April 2014.

A more detailed response to the consultation feedback received is provided in the Attachment.

RESPONSE TO FEEDBACK RECEIVED FROM CONSULTATION ON CLEARING AND SETTLEMENT SERVICES FOR APPROVED MARKET OPERATORS AND APPROVED LISTING MARKET OPERATORS

Submission Author	Comments and Issues Raised	ASX Response
1. Chi-X Australia	A. Chi-X Australia is supportive of ASX's proposal to remove the annual service fee for the Trade Acceptance Service effective from 1 July 2014, but further requests that ASX reimburse Chi-X Australia for the annual service fees already paid since the commencement of the Trade Acceptance Service.	A. ASX will waive the annual service fee for the Trade Acceptance Service effective from the introduction of the Code of Practice for Clearing and Settlement of Cash Equities in Australia (Code of Practice) on 9 August 2013. ASX will reimburse Chi-X Australia for the fees paid since 9 August 2013.
	B. Chi-X Australia considers that the waiver of the annual service fee for the Trade Acceptance Service should not be subject to the Code of Practice and the policy decision to defer consideration of any licence application from a competing central counterparty for the clearing of cash equities remaining in place.	B. ASX considers it appropriate for fees to be responsive to market structure changes. The waiver is subject to the Code of Practice and the policy decision to defer consideration of any licence application from a competing central counterparty for the clearing of cash equities remaining in place on the basis that if this changes, ASX will need to consider the service and the fees that it provides in the context of the market structure at the time.
	<p>C. Chi-X Australia is supportive of the proposed amendments to the service level agreements and the legal terms, and considers that they will improve the services provided to those using the Trade Acceptance Service. Chi-X Australia raised the following on the technical aspects of the proposed amendments:</p> <ol style="list-style-type: none"> 1) technical enhancements to the Trade Acceptance Service may require more notice than the minimum periods proposed in Clause 3 of Schedule 3 of the legal terms, in particular: <ul style="list-style-type: none"> • technical enhancements involving an external CHES release may require more than a 3 month notice period; and • a non-functional enhancement requiring an internal CHES release may require more than a 1 month notice period (a 2 month notice period is suggested) 2) in a default situation or where restrictions are imposed on a clearing participant, Chi-X Australia should be kept informed of any developments prior to action being taken. 	<p>C.1) ASX is changing the proposal set out in Section 3 of Schedule 3 of the Legal Terms. This means an increase in the minimum notice period:</p> <ul style="list-style-type: none"> • from 3 months to 4 months for a TAS Application functional upgrade requiring an external CHES release; and • from 1 month to 2 months for a TAS Application non-functional enhancement requiring an internal CHES release. <p>C. 2) ASX considers that the proposed service level of advising an AMO of a clearing participant default or the imposition of restrictions on a clearing participant as soon as possible, and in any event, within 30 minutes of advising the participant, is appropriate. ASX Clear is subject to confidentiality arrangements with participants and the initial priority must be to manage any such default to minimise systemic risk and ensure the stability of the market.</p>

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	<p>D. Chi-X Australia is supportive of the proposed amendments to the Operational and Technical Standards to remove unnecessary and duplicative requirements. However, Chi-X Australia is concerned by the regulatory obligations placed on it through the legal terms and Operational and Technical Standards. Chi-X Australia questions whether the Operational and Technical Standards are equivalent to those in place for ASX Trade.</p>	<p>D. ASX has changed the Operational and Technical Standards to minimise the regulatory obligations for Chi-X.</p> <p>These standards are important in managing counterparty and operational risk to ensure stability and support the market for all users. The Operational and Technical Standards, which are imposed under the Trade Acceptance Service, are equivalent to the requirements applicable to other clearing house facility users, including ASX Trade and ASX participants through ASX's operating rules.</p>
	<p>E. Chi-X Australia suggests that confidential information provided by an AMO to ASX Clear should only be disseminated within the ASX Group on a 'needs to know' basis and that the information handling standards should be updated accordingly.</p>	<p>E. ASX has explicitly referenced the principle of confidential information only being disseminated on a 'needs to know' basis in the information handling standard, as suggested in the consultation feedback. ASX has implemented intra-group information handling standards. These include appropriate restrictions on the dissemination of AMO confidential and conflict sensitive information that is consistent with the principle of information only being disseminated on a 'needs to know' basis.</p> <p>The information handling standards have been enhanced and remain subject to an assurance program. They apply at a board governance level and also at the management level. At the board level, for example, a quorum of the ASX Clear and ASX Settlement Boards can be formed by non-ASX Limited directors.</p> <p>Other new safeguards that have been put in place include:</p> <ul style="list-style-type: none"> • the General Manager, Regulatory Assurance being the single point of contact; • conflict sensitive information only being provided to nominated persons consented to by the AMO; and • communication of conflict sensitive information with nominated persons using an encrypted email service and secure documentation storage¹. <p>The safeguards that have been put in place have successfully ring-fenced conflict sensitive information. The General Manager, Regulatory Assurance has advised that there have been 5 instances where the information handling standard has been used with respect to information provided by Chi-X Australia that was AMO conflict sensitive information. An internal review (by ASX Internal Audit) did not identify any instances where conflict-sensitive information was not managed in accordance with the information handling standard.</p>

¹ The same procedures for the protection of confidential and conflict sensitive information have also been put in place for ALMOs.

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	<p>F. In relation to the Technical Review, it is noted that:</p> <ul style="list-style-type: none"> • the Review was undertaken without the involvement of Chi-X Australia; • it lacks an examination of the differences in the AMO and ASX Trade Processors on the business of Chi-X Australia; and • a single rejected transaction (let alone a trade outage of some hours) can have a crippling effect on Chi-X's trading platform. 	<p>F. The lack of complaints received from clearing and settlement participants in conjunction with the Trade Acceptance Service is consistent with the seamless provision of clearing and settlement services where trades are submitted through the Trade Acceptance Service. In undertaking the Technical Review, ASX sought engagement.</p> <p>In September 2013 and December 2013 quarters, there were 66 and 78 trades rejected on ASX respectively. No trades were rejected through the Trade Acceptance Service for that period. In that context, ASX queries the claim that a single rejected transaction can have a crippling effect on Chi-X's trading platform.</p> <p>The Trade Acceptance Service has had an average system availability of 99.98% from its commencement to December 2013. There have only been three incidents since commencement where the service has not been available, with a total downtime of 77 minutes. Average system availability for the last 6 months has been 100%.</p>
	<p>G. Chi-X Australia suggests that access to ASX Clear systems should be exactly the same for clients of ASX Clear, including those within and outside the ASX Group.</p>	<p>G. The Trade Acceptance Service provides access to clearing and settlement services on a materially equivalent basis to that provided to the ASX market. This is demonstrated by the operational performance metrics reported in relation to system availability of both CHES and the Trade Acceptance Service and trade rejection data for trades submitted for clearing and settlement through the Trade Acceptance Service and those submitted from the ASX market (see above and the operational performance reports provided on the ASX website at: http://www.asx.com.au/cs/settlement-performance.htm)</p> <p>The Trade Acceptance Service was built to provide for third party external access to CHES incorporating secure access authentication and bilateral message encryption. It was developed to replicate the verification and validation undertaken by ASX Trade and CORE. The Trade Acceptance Service includes two additional service features: positive reporting of trade acceptance and continuous processing of trades through batch settlement.</p> <p>The re-direction of trades from the ASX market through the Trade Acceptance Service in order to achieve "identical" access would involve unnecessary costs and technical changes.</p>

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	H. Chi-X Australia suggests that the service levels provided and the standards imposed by ASX Clear should be the same (and transparently so) for all platforms, including those within and outside the ASX Group.	H. The services levels provided, and the operational and technical standards imposed, by ASX Clear are equivalent for all AMOs (including ASX). These service levels and operational and technical standards applicable to ASX have been provided to Australia's regulatory agencies.
	I. Chi-X Australia suggests ASX Clear and ASX Settlement pricing should be benchmarked to global norms.	I. ASX Clear and ASX Settlement have commissioned independent international cost benchmarking of cash market clearing and settlement services in accordance with the commitments in the Code of Practice. The Forum and the Business Committee (established under the Code of Practice) have been consulted in commissioning this analysis. A final report will be delivered by the 23 June 2014 Forum meeting. Oxera Consulting will present the findings of the benchmarking analysis to the June Forum meeting. Chi-X Australia does not pay clearing and settlement fees.
	J. Chi-X Australia suggests that the Board of ASX Clear should include representation from a market operator and a participant.	J. The Forum established under the Code of Practice provides a mechanism for users of ASX's cash market clearing and settlement services to provide input to the Boards of ASX Clear and ASX Settlement in relation to the ongoing development cash market clearing and settlement infrastructure and services. The Forum (and the associated Business Committee) has worked effectively to date with the development of a forward work program. Within the forward work program, the Forum and Business Committee have prioritised the introduction of a T+2 settlement cycle for cash equities. The Boards of ASX Clear and ASX Settlement include independent non-executive directors with clearing and settlement expertise. ASX's governance arrangements also comply with the Financial Stability Standards and other international standards as appropriate. As noted above in response to item E, the Boards of ASX Clear and ASX Settlement have also been structured in a way that allows for a quorum to be formed by non-ASX Limited directors to consider AMO conflict sensitive information.
	K. Chi-X Australia suggests that ASX Clear should be separated from other ASX business units, including ASX Settlement, that compete with ASX Clear users.	K. The current ASX operating model provides significant operational efficiencies and the Code of Practice provides a mechanism to obtain user input whilst also ensuring safeguards are in place to protect AMO conflict sensitive information. Separation of ASX business units would mean a significant increase in costs for the industry.

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2. APX	<p>A. APX suggests that the annual access fee for ALMOs for the settlement facilitation service should also be waived consistent with the principles considered in waiving the annual service fee for the Trade Acceptance Service. APX also queries the appropriateness of some of the annual fees for ALMOs given how the development of CHES was funded.</p>	<p>A. The Settlement Facilitation Service has been provided since 4 June 2012. There are currently three ALMOs using the Settlement Facilitation Service. All users are charged on the same basis, that is, each ALMO is charged the fee annually for the first three years that they use the service. The National Stock Exchange of Australia was the first ALMO to use the service since June 2012.</p> <p>The annual Settlement Facilitation Service DvP Development fee for each exchange for the first 3 years of use is not linked to the costs incurred with the original development of DvP in CHES. The annual Settlement Facilitation Service DvP Development fee is charged to recover costs associated with the development of a DvP settlement facilitation service for ALMOs. The Settlement Facilitation Service CHES Operations and Support fee reflects the ongoing costs of providing CHES operations and support to ALMOs. ASX is not waiving the annual Settlement Facilitation Service DvP Development fee.</p>
	<p>B. APX highlights the differences between an ALMO and an AMO for the purpose of considering how the Trade Acceptance Service may be adapted for ALMO-listed and approved financial products.</p> <p>In relation to the possible provision of clearing and settlement arrangements to ALMOs in the future, APX suggests that ALMOs should be provided with identical access to that provided to ASX (using an API connection to CORE), including with respect to the provision of straight through processing capability with CHES for the establishment and maintenance of listees.</p>	<p>B. There have not been any formal expressions of interest by an ALMO for clearing and settlement arrangements through a 'trade acceptance service'. ASX has proactively sought early engagement with potential ALMO users to assess the modifications to the Trade Acceptance Service required to facilitate such a service. ASX appreciates the preliminary feedback received to date.</p>
	<p>C. APX suggests that there should be an independent assessment of the equality of access to clearing and settlement services provided by ASX through the Trade Acceptance Service.</p>	<p>C. ASX provides full transparency of the operational performance metrics for system availability and trade rejections. These reports are published on the ASX website at http://www.asx.com.au/cs/settlement-performance.htm and are included in the Forum and Business Committee papers, which are also published on the ASX website. An independent assessment of the equality of access to clearing and settlement services is not required given the equivalent outcomes achieved for trades submitted for clearing and settlement through the Trade Acceptance Service and those submitted for clearing and settlement from the ASX market.</p> <p>The lack of complaints received from clearing and settlement participants in conjunction with the Trade Acceptance Service also indicates that an independent assessment of the clearing and settlement services provided by ASX through the Trade Acceptance Service is unnecessary.</p>

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	D. APX expresses interest in clearing and settlement arrangements for cash market transactions in both RMB and AUD. APX has enquired if, and when, ASX Clear may provide such capability.	D. ASX Clear does not have a definitive timeframe for providing such services and does not expect to provide them in the near term. There is a change request process available for ALMOs seeking to request new or enhanced services. The procedures and application forms for ALMOs seeking to request new or enhanced services are available on the ASX website at: http://www.asx.com.au/cs/services-for-approved-listing-market-operators.htm .
	E. APX expresses interest in a 'trade acceptance service' for derivatives with both AUD and RMB clearing and settlement capability. APX has enquired if, and when, ASX Clear may provide such a service.	E. ASX Clear has no plans to provide such services.
	F. APX welcomes the measures for the protection of confidential information set out in the proposed information handling procedure for ALMOs, but suggests that ASX clearing and settlement services should be separated from the rest of the ASX Group to resolve conflicts.	F. APX's acknowledgement of the information handling procedure and the measures ASX has put in place to protect the ALMO confidential information is appreciated. The current ASX operating model provides significant operational efficiencies and the Code of Practice provides a mechanism to obtain user input whilst also ensuring safeguards are in place to protect ALMO conflict sensitive information. Separation of ASX business units would mean a significant increase in costs for the industry.