

SPECIALIST SETTLEMENT PARTICIPANTS

<p>The purpose of this Guidance Note</p>	<p>To outline the requirements entities must meet to be admitted as a specialist settlement participant in the ASX Settlement clearing and settlement facility and to act as a participant bidder for a takeover bid</p>
<p>The main points it covers</p>	<ul style="list-style-type: none"> • The application process generally • The admission requirements for specialist settlement participants • The ongoing obligation of specialist settlement participants to comply with the admission requirements • The right of appeal if an admission application is rejected • Resignation of specialist settlement participants • Termination of specialist settlement participants
<p>Related materials you should read</p>	<ul style="list-style-type: none"> • ASX Settlement Procedure Guidelines (APGs) Section 13 Acquisitions, available online at: https://asxonline.com/content/dam/asxonline/public/documents/manuals/chess-asx-settlement-procedure-guidelines/asx015316.pdf

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Important notice: ASX has published this Guidance Note to assist applicants considering a participation in ASX Settlement to understand the applicable admission requirements for specialist settlement participants. It sets out ASX's interpretation of the ASX Settlement Operating Rules and how ASX is likely to enforce those rules. Nothing in this Guidance Note necessarily binds ASX in the application of the ASX Settlement Operating Rules in a particular case. In issuing this Guidance Note, ASX is not providing legal advice and applicants should obtain their own advice from a qualified professional person in respect of their obligations. ASX may withdraw or replace this Guidance Note at any time without further notice to any person.

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1. Introduction

This Guidance Note is published by ASX Settlement Pty Limited (“ASX”) to outline to applicants the requirements they must meet to be admitted as a specialist settlement participant in the ASX Settlement facility and to act as a participant bidder for a takeover bid.¹

A “specialist settlement participant” is a special category of participant permitted under the ASX Settlement Operating Rules that is not permitted to act as a sponsoring participant. Currently, the specialist settlement participants admitted by ASX are those intending to act solely as a “participant bidder” for a “takeover bid”.²

A “participant bidder” is a participant in the ASX Settlement facility that is authorised (whether as the bidder or on behalf of the bidder) to receive electronic acceptances of bids made under a takeover bid.³

The phrase “takeover bid” generally refers to a takeover bid for an Australian company or managed investment scheme listed on ASX made under Chapter 6 of the Corporations Act 2001 (Cth).⁴ However, ASX has a general discretion to treat any bid to acquire financial products, some or all of which are held on a CHESSE subregister, to

¹ This Guidance Note does not address applications to be admitted as a general settlement participant, account participant or product issuer settlement participant in the ASX Settlement facility. Guidance on those applications can be found in ASX Settlement Rules Guidance Note 1 *Admission as a Participant*.

² See the note to ASX Settlement Operating Rule 4.4.1 confirming that a person admitted as a specialist settlement participant under that rule may not act as a sponsoring participant. Their role is limited to acting as a participant bidder and, in that capacity, as the controlling participant in relation to the “takeover transferee holding”. See ASX Settlement Operating Rule 14.12.6.

³ See the definition of “Participant Bidder” in ASX Settlement Operating Rule 2.13.1.

⁴ See ASX Settlement Operating Rule 2.2.1 and the definition of “takeover bid” in section 9 of the Corporations Act 2001 (Cth). That Act is referred to in this Guidance Note as the “Corporations Act”. References in this Guidance Note to sections of an Act are to sections of the Corporations Act, unless otherwise indicated.

be a takeover bid for the purposes of the ASX Settlement Operating Rules.⁵ ASX will usually exercise that discretion in relation to a takeover bid made under the law of a foreign jurisdiction for securities in a foreign company or trust listed on ASX. It will also usually exercise that discretion in relation to an equal access buy-back of securities in an Australian company listed on ASX made under section 256B(2) of the Corporations Act or an equivalent buy-back of securities in a foreign company listed on ASX made under the law of a foreign jurisdiction.

References in this Guidance Note to a “takeover bid” should therefore be understood as extending to all relevant⁶ forms of takeovers and buy-backs and references to a “bidder” should be understood to mean the entity making the takeover bid or conducting the buy-back.

2. The application process generally

2.1 Why entities are admitted as specialist settlement participants

Electronic messages to transfer ownership of securities held on a CHESSE subregister can only be processed in the ASX Settlement facility by or on behalf of an ASX Settlement participant.

Generally, a bidder intending to make a takeover bid for securities held on a CHESSE subregister will not be an ASX Settlement participant. To be able to receive electronic acceptances of the bid, therefore, it will either need to become an ASX Settlement participant or to appoint an ASX Settlement participant to act as its agent.

To help facilitate takeover bids, ASX has created a special category of specialist settlement participant called a “participant bidder”, whose sole role is to receive electronic acceptances (whether as the bidder or on behalf of the bidder) under a takeover bid.

2.2 Timing requirements

A bidder intending to make a takeover bid for securities held on a CHESSE subregister must, not less than 5 business days before the start of the offer period for the bid, do one of the following:⁷

- apply to become a specialist settlement participant for the limited purpose of acting as the participant bidder for the bid;
- appoint an existing participant in the ASX Settlement facility to act as the participant bidder for the bid and give notice to ASX that the participant will be the participant bidder for the bid; or
- if the bidder is already an ASX Settlement participant, give notice to ASX that the bidder will be the participant bidder for the bid.

Generally, a bidder intending to make a takeover bid for securities held on a CHESSE subregister will take the first of these options and apply to ASX to be admitted as a specialist settlement participant for the purpose of acting as the participant bidder for the bid. To do this, the bidder must complete the prescribed application form for admission as a specialist settlement participant (see below).⁸ Where the bidder does not have the required infrastructure to connect to CHESSE, it may still apply to be the participant bidder for the bid and outsource the technical function to a CHESSE accredited third party (usually its share registry) for the purpose of transmitting the relevant CHESSE messages.⁹

⁵ See ASX Settlement Operating Rule 14.12.1.

⁶ While, technically, the definition of “takeover bid” in the Corporations Act captures both on-market and off-market takeover bids, in practice, the provisions relating to specialist settlement participants and participant bidders in the ASX Settlement Operating Rules are only relevant to off-market takeover bids and buy-backs. On-market takeover bids and buy-backs are made by an ASX market participant acting as agent for the entity making the bid or conducting the buy-back and are effected by the participant purchasing securities on-market in the ordinary course of trading on the ASX market.

⁷ ASX Settlement Operating Rule 14.12.5(a).

⁸ ASX Settlement Operating Rule 4.2.1 and the related Procedure.

⁹ See ‘3.1 Technical and performance requirements’ below.

A bidder intending to make a takeover bid for securities held on a CHESSE subregister may also take the second of these options and appoint a third party ASX Settlement participant to be the participant bidder for the bid. However, the bidder will need to ensure that the ASX Settlement participant has a CHESSE interface system that has been accredited by ASX for the additional messages required to receive takeover bids. Not all ASX Settlement participants will hold this accreditation.

Where a bidder is an existing ASX Settlement participant, it may take the third of these options and act as the participant bidder for the takeover bid. In order to do so, it will need to have a CHESSE interface system that has been accredited by ASX for the additional messages required to receive takeover bids or outsource this function to a CHESSE accredited third party (usually its share registry).¹⁰

Where a bidder wishes to take the second or third option above, the bidder must complete a Participant Bidder Notice.¹¹

2.3 How long does a specialist settlement participation last

An entity can be admitted as a specialist settlement participant to act as the participant bidder for a single takeover bid. ASX may terminate its specialist settlement participation where it is satisfied that the takeover bid is complete or has been withdrawn.¹²

2.4 The role of ASX Equity Operations

The receipt and processing of applications for admission as a specialist settlement participant and notices regarding the appointment of a participant bidder are co-ordinated within ASX by a team known as “Equity Operations”. Before submitting an application to be appointed as a specialist settlement participant, ASX recommends that an applicant first discuss the matter with Equity Operations at the earliest opportunity. Equity Operations will be able to provide general advice on the application process, the requirements for admission as a specialist settlement participant and the expected timeframe for completion of the admission process.

Equity Operations can be contacted by telephone on 1800 814 051 for domestic calls and on +61 2 9227 0863 for international calls or by email at CHESShelp@asx.com.au.

2.5 The admission application

To apply for admission as a specialist settlement participant, the applicant must complete an application in the prescribed form.¹³ An editable version of the application form can be downloaded from: www.asx.com.au/regulation/compliance/compliance-downloads.htm.

The application form is divided into two separate parts which must be completed by all applicants:

- Part A *Applicant Information*; and
- Part B *Takeover bid Information*.

The application must be properly completed, dated and executed by the applicant.¹⁴ It must also be accompanied by the annexures specified in the application form. ASX may reject or defer consideration of an application for admission as a specialist settlement participant that is not properly completed and executed or that is not accompanied by all of the required annexures.

All applications for admission as a specialist settlement participant must be provided in soft copy via the application form upload facility under “Applications” on ASXOnline.com using the log-on credentials provided by ASX. The

¹⁰ See ‘3.1 Technical and performance requirements’ below.

¹¹ ASX Settlement Operating Rule 14.12.5 and the related Procedure. An editable version of the Participant Bidder Notice can be downloaded from: www.asx.com.au/regulation/compliance/compliance-downloads.htm.

¹² ASX Settlement Operating Rule 4.16.4A. See Section 7 (Termination of specialist settlement participants) of this Guidance Note 14.

¹³ ASX Settlement Operating Rule 4.2.1 and the related Procedure.

¹⁴ The cover page of the application form has instructions for its completion. The form is signed at the foot of Section 2 of Part A (just above the shaded box with the instructions on how to sign the form).

upload facility requires the application form and each relevant annexure to be uploaded as separate files.

2.6 Application acceptance

Equity Operations will check that an application for admission as a specialist settlement participant has been properly completed and executed and attaches all of the required documents.

If an application passes these pre-acceptance validation checks, ASX will commence its formal review of the application. If it does not pass these pre-acceptance validation checks, Equity Operations will discuss with the applicant what additional information or documentation is required before the application can be accepted.

2.7 Formal review

Upon acceptance of an application, the relevant ASX divisions will review the application to assess whether it conforms to the admission requirements for specialist settlement participants in the ASX Settlement Operating Rules. As part of that process, ASX will also review any waiver requested from the ASX Settlement Operating Rules to assess whether it conforms to the underlying principles of the Rules¹⁵ and ASX policy.

If the application does not fully conform to the requirements of the ASX Settlement Operating Rules and a specific waiver has not been sought by the applicant, ASX will contact the applicant to discuss amendments to the application to meet those requirements or, in an appropriate case, whether the applicant should apply for a waiver.

2.8 Notification of decision to applicant

Once ASX has made a formal decision to admit the applicant as a specialist settlement participant, Equity Operations will communicate that decision to the applicant. The communication will state what (if any) further requirements the applicant must satisfy to commence its activities as a specialist settlement participant in the ASX Settlement facility.

Thereafter, Equity Operations will act as a point of liaison between the applicant and the relevant ASX business units in working towards satisfying those requirements in a timely manner. This includes ensuring the participant has been adequately set-up and accredited in CHESS and, for an applicant intending to act as a participant bidder for a specific takeover bid or buy-back, verifying the details of the takeover bid or the buy-back offer against the public announcements made by the bidder.

ASX will generally release an ASX Notice to the market confirming the details of the applicant's approval as the specialist settlement participant and participant bidder for a specific takeover bid. Notices are generally issued no earlier than the opening date of the bid.

2.9 Fees

ASX charges an application fee for admission as a specialist settlement participant and administration fees for various actions involving participant bidders. Applicants should refer to ASX's published schedules of fees¹⁶ for information regarding these fees.

3. The specific admission requirements for specialist settlement participants

The following admission requirements apply to applicants seeking to be admitted as a specialist settlement participant under the ASX Settlement Operating Rules. The guidance below addresses how an applicant seeking admission as a specialist settlement participant in the ASX Settlement facility should complete the application form.

3.1 Technical and performance requirements

An applicant seeking admission as a specialist settlement participant must satisfy ASX that it meets the technical and performance requirements, including having the necessary organisational and technical resources:

¹⁵ The fundamental principle underlying all ASX Settlement Operating Rules is that the ASX Settlement facility should be fair and efficient.

¹⁶ Available online at: <http://www.asx.com.au/about/asx-fees.htm>.

- to communicate reliably with CHESSE; and
- to ensure that settlement messages submitted by the participant do not interfere with the proper functioning, efficiency and integrity of the settlement facility.¹⁷

An applicant must supply ASX with details of the CHESSE interface system it proposes to utilise to process electronic acceptances during the period of the takeover bid under the ASX Settlement Operating Rules.¹⁸ The system can be operated by the applicant itself, or the applicant may outsource the function to a CHESSE accredited third party provider (usually its share registry) for the purposes of transmitting the relevant CHESSE messages. ASX must be satisfied that the CHESSE interface system is one that has been accredited by the CHESSE user testing division for dealing with electronic acceptances, including the additional CHESSE message types associated with takeover bids under the ASX Settlement Operating Rules.

3.2 Capacity requirements

An applicant seeking admission as a specialist settlement participant must satisfy ASX that it meets the capacity requirements.¹⁹ The requirements differ for applicants that are a body and applicants that are a natural person, as follows:

- for an applicant that is a body, the capacity requirements are that:
 - if the body is a body corporate, the body is not an externally administered body corporate; or
 - if the body is not a body corporate, the body is not under any equivalent form of insolvent administration;
- for an applicant that is a natural person, the capacity requirements are that:
 - the person is at least 18 years of age;
 - the person is not an insolvent under administration;
 - no person has been appointed under any incapacity law to administer the estate of the person; and
 - no order has been made under the Corporations Act prohibiting the person from managing a corporation.

For applicant bodies that consist of two or more partners or trustees, each of those persons must also comply with the requirements above.²⁰

The applicant must provide statutory declarations to ASX confirming it meets the applicable capacity requirements. The required statutory declarations must be attached to the application form as Annexure A1.²¹ If the applicant is unable to provide such a certification, it must instead attach as Annexure A1 a statement to that effect and a detailed explanation of the circumstances involved.

¹⁷ ASX Settlement Operating Rules 4.4.1(b) and 4.7.1.

¹⁸ Refer to questions A.2.1 and A.2.2 of the application form.

¹⁹ ASX Settlement Operating Rules 4.4.1(d) and 4.10.

²⁰ ASX Settlement Operating Rule 4.10.1(c).

²¹ Question A.3.1 of the application form. An editable version of a sample statutory declaration can be downloaded from: www.asx.com.au/regulation/compliance/compliance-downloads.htm.

3.3 Organisational requirements

An applicant seeking admission as a specialist settlement participant must provide a certification to ASX that it has the resources and processes in place to comply with its obligations under the ASX Settlement Operating Rules.²² The required certification must be attached to the application form as Annexure A2.²³

For these purposes, “resources” include technological and human resources and “processes” include management supervision, compliance, business continuity and disaster recovery processes.²⁴

In providing this certification to ASX, an applicant seeking admission as a specialist settlement participant in the ASX Settlement facility must have regard to:²⁵

- the ASX Settlement Operating Rules;
- this Guidance Note; and
- any other matters specified in the admission application.

The key processes ASX would expect a specialist settlement participant to have in place include:

- its processes for meeting the minimum technical requirements prescribed by ASX for access to the ASX settlement facility including connectivity, testing and accreditation requirements;²⁶
- its processes for collating and recording electronic acceptance messages in CHES;
- its business continuity and disaster recovery arrangements to ensure the timely recovery of its usual operations for the period of the takeover bid; and
- having adequately trained personnel that are familiar with the ASX Settlement Operating Rules and Procedures to allow the applicant to generate, receive and process the relevant CHES messages.

It is up to each applicant to determine what resources and processes it needs to have in place to comply with its obligations under the ASX Settlement Operating Rules, having regard to the materials above and to the nature and scale of its intended business activities.

If required by ASX, the applicant must be able to demonstrate to the satisfaction of ASX, at any time, the basis on which the above certification is or was provided.²⁷ This applies both before and after the applicant is admitted as a participant.

To be able to demonstrate the basis on which the certification is provided, ASX would expect the applicant’s director, chief executive or other senior officer to have considered its processes to act as a specialist settlement participant in accordance with the ASX Settlement Operating Rules and to be satisfied that they are sufficient for the applicant to comply with its obligations under those Operating Rules prior to providing this certification to ASX.²⁸

Those applicants taking the option to utilise an external CHES accredited service provider system should undertake appropriate due diligence enquiries before engaging the external provider to ensure that it has been appropriately accredited to transmit the relevant CHES messages and that the external provider has the key resources and processes (including, but not limited to, the key processes set out above) to perform the required

²² ASX Settlement Operating Rules 4.4.1(g), 4.18.1 and Procedure 4.18.1.

²³ Question A.4.1 of the application form. The prescribed form of written certification can be downloaded from: www.asx.com.au/regulation/compliance/compliance-downloads.htm.

²⁴ ASX Settlement Operating Rules Procedure 4.18.1.

²⁵ ASX Settlement Operating Rule 4.18.1 and related Procedure.

²⁶ ASX Settlement Operating Rules 4.4.1(b) and 4.7.1.

²⁷ ASX Settlement Operating Rules Procedure 4.18.1.

²⁸ That is, prior to executing the application form to be admitted as a specialist settlement participant.

activities competently, reliably and in a manner that will comply with all applicable ASX Settlement Operating Rules.

3.4 Applicants incorporated overseas

If an applicant seeking admission as specialist settlement participant is incorporated in a place outside Australia, it must either be registered as a foreign company carrying on business in Australia under Part 5B.2 Division 2 of the Corporations Act or appoint an agent in Australia approved by ASX for the service of process in Australia and provide the contact details of the agent in its response to question A.5.1 of the application form together with a formal letter of appointment with the application documentation as Annexure A3.²⁹

An applicant appointing an agent in Australia must provide a legal opinion from a recognised law firm in the place where it is incorporated which deals with matters required by ASX in question A.5.2 of the application form and attach it, together with relevant supporting documentation, as Annexure A4.

3.5 Applicants intending to operate from overseas

An applicant must also indicate in its response to question A.6.1 of the application form whether it proposes to locate any part of its ASX specialist settlement activities (including, without limitation, any infrastructure through which it will send settlement messages to ASX or any employees engaged in those activities), outside Australia. If it does, it must attach as Annexure A5 to its application a statement setting out full details of the proposed overseas activity and evidence that it has obtained all necessary regulatory approvals from any relevant governmental agency or regulatory authority in Australia or elsewhere in respect of the overseas activity.

This applies whether the applicant is incorporated in Australia or overseas. ASX will use the information in this statement to assess whether it should apply further requirements for the applicant to be eligible to be admitted as a participant in the ASX Settlement facility in accordance with ASX Settlement Operating Rule 4.2.2A.

3.6 Takeover bid information

An applicant must provide ASX with details of the takeover bid and attach a copy of the relevant bidder documentation (if available) as Annexure B1 to the application form.³⁰

4. Ongoing compliance with the admission requirements

A specialist settlement participant has an ongoing obligation to continue to satisfy the applicable admission requirements for the duration of its participation in the ASX Settlement facility.³¹ This includes, in particular, the requirement to have “adequate resources and processes” to communicate reliably with CHES³² in order to comply with its obligations as a specialist settlement participant under the ASX Settlement Operating Rules.

5. The right of appeal if an admission application is rejected

An applicant is entitled to appeal against a decision to reject its application for admission as a participant in the ASX Settlement facility.³³

The applicant must pay an appeal fee of \$5,000 (exclusive of GST) to, and lodge written notice of the appeal with, the ASX Appeals Tribunal within 10 business days after the decision is sent to the applicant.³⁴

²⁹ ASX Settlement Operating Rules 4.4.1(e) and 4.12.5. A participant must also inform ASX of the intended effective date of any agent ceasing for any reason to act as agent for the participant and, where that applies, appoint as soon as practicable, and in any case before the outgoing agent ceases acting as agent for the participant, a new agent approved by ASX.

³⁰ Part B of the application form.

³¹ ASX Settlement Operating Rules 4.4.1 and 6.1.1(a).

³² ASX Settlement Operating Rules 4.4.1(d) and 4.18.1.

³³ ASX Settlement Operating Rule 4.14.3 and ASX Enforcement and Appeals Rulebook Rule 3.1.2(b).

³⁴ Rule 3.1.3 of the ASX Enforcement and Appeals Rulebook and the accompanying Procedure.

6. Resignation of specialist settlement participants

A specialist settlement participant can resign its participation by giving not less than 20 business days' notice to ASX.³⁵

The participant must satisfy ASX that it has taken, or will have taken before the proposed date of resignation, proper steps for the orderly winding down of its business in respect of the ASX Settlement facility and comply with any reasonable direction of ASX in that regard.³⁶ It must also have satisfied all of its obligations to ASX, including (without limitation) having paid to ASX all outstanding fees.³⁷

The resignation of a specialist settlement participant is not effective until the resignation is accepted by ASX.³⁸ If ASX accepts the resignation, the specialist settlement participant must, before the proposed date of resignation, ensure that all outstanding transactions that affect the "takeover transferee holding" have been properly completed.³⁹

7. Termination of specialist settlement participants

In addition to the general powers that ASX has to suspend or terminate any ASX Settlement participation,⁴⁰ ASX may terminate the participation of a specialist settlement participant if it has been appointed to act as the participant bidder for a particular takeover bid and ASX is satisfied that the takeover bid is complete or has been withdrawn. In such cases ASX may terminate the participation of a specialist settlement participant by written notice to the participant.⁴¹

³⁵ ASX Settlement Operating Rule 4.15.1(a).

³⁶ ASX Settlement Operating Rule 4.15.1(b) and (c).

³⁷ ASX Settlement Operating Rule 4.15.2(b).

³⁸ ASX Settlement Operating Rule 4.15.2.

³⁹ ASX Settlement Operating Rule 4.15.2(a).

⁴⁰ See generally ASX Settlement Operating Rule 12.19.1 and ASX Settlement Operating Rules Guidance Note 5 *Suspension and Termination of Participants*.

⁴¹ ASX Settlement Operating Rule 4.16.4A.